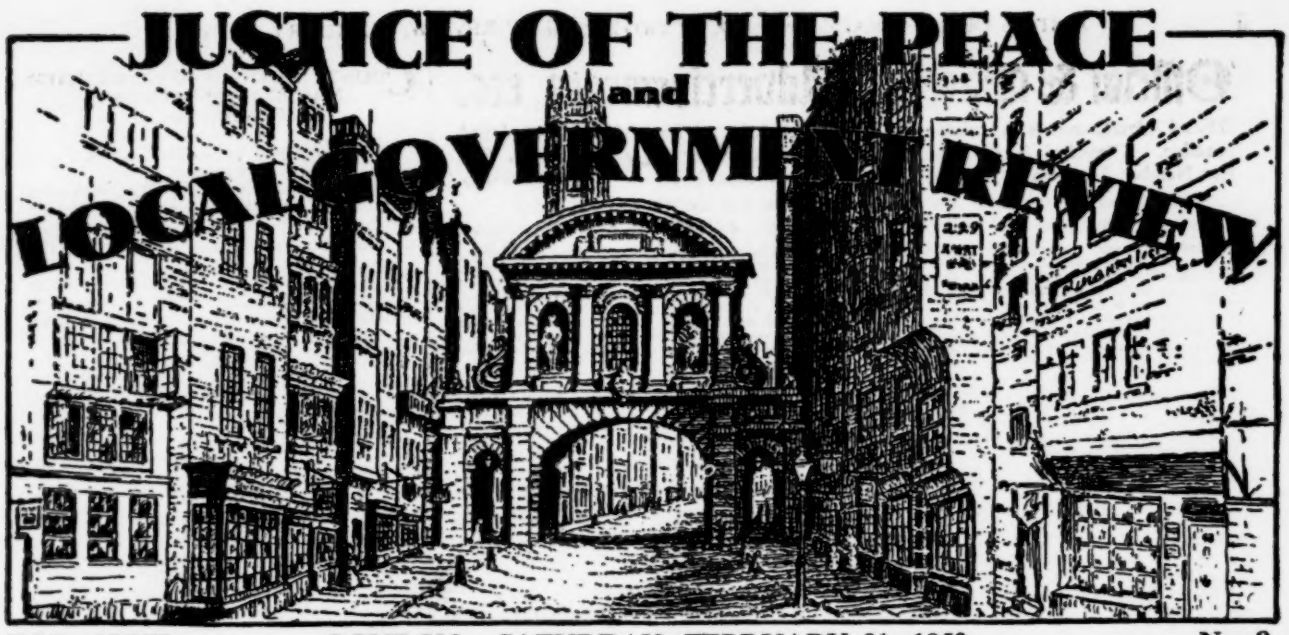

VOL. CXVII LONDON: SATURDAY, FEBRUARY 21, 1953 No. 8

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note:* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU T. E. Hoyland. **Ex-Detective Sergeant.** Member of the B.D.A., F.B.D., Associated American Detective Agencies, and the World Secret Service Association. Confidential enquiries ; Divorce, etc. ; Over 600 agents in all parts of the World. Over twenty-five years C.I.D. and Private Detective Experience at your service. 1, Mayo Road, Bradford. Tel. : 26823 day or night.

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COUNTY BOROUGH OF WEST HAM

Appointment of Assistant Solicitor

APPLICATIONS are invited for this appointment, Salary Grade A.P.T. VII/VIII (£710 to £835) plus London Weighting (£20—£30 according to age). Commencing salary according to experience.

Terms and conditions of appointment with forms of application may be obtained on request, and applications, accompanied by copies of two recent testimonials, must be received by Friday, March 6, 1953.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.

DURHAM COUNTY COMBINED AREA PROBATION COMMITTEE

Appointment of Male Deputy Principal Probation Officer

APPLICATIONS from experienced whole-time Probation Officers are invited for the above appointment.

The salary and conditions of service will be in accordance with the Probation Rules, 1949-52, namely, £775 per annum rising by increments of £30 to £895.

Applications, giving particulars of age, education and experience, together with the names of two referees, should reach the undersigned not later than March 7, 1953.

J. K. HOPE,
Secretary to the Committee.

Shire Hall,
Durham.

NOTTINGHAMSHIRE MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk

APPLICATIONS are invited from persons qualified in accordance with the Justices of the Peace Act, 1949, for the combined appointment of whole-time Clerk to the Justices for the Borough of Mansfield and the Mansfield Petty Sessional Division and the estimated population of the two Divisions is 160,000. The personal salary will be £1,600 subject to review when National Scales for Justices' Clerks are negotiated, and office accommodation and staff will be provided by the Committee. The appointment which may be determined by three months' notice on either side will be superannuable and subject to medical examination.

Applications, stating age, qualifications and experience, together with copies of three recent testimonials, should be delivered to my office not later than March 13, 1953.

K. TWEEDALE MEABY,
Clerk of the Magistrates' Courts Committee.

Shire Hall,
Nottingham.

ESSEX PROBATION AREA

Appointment of Probation Officers

APPLICATIONS are invited for the appointment of a full-time Female Probation Officer and a full-time Male Probation Officer.

Applicants must not be less than twenty-three nor more than forty years of age, except in the case of serving probation officers.

The appointment will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those Rules.

Applicants should be able to drive a car.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with the names of three persons to whom reference can be made, must reach the undersigned not later than two weeks after the appearance of this advertisement.

W. J. PIPER,
Clerk of the Peace and of the Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.

COUNTY BOROUGH OF GLOUCESTER MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk

APPLICATIONS are invited from Barristers or Solicitors qualified in accordance with the Justices of the Peace Act, 1949, for the part-time appointment of Justices' Clerk for the County Borough.

Particulars relating to the appointment and to applications therefor may be obtained at my office or will be sent on receipt of a foolscap stamped and addressed envelope.

Canvassing will disqualify.

W. H. H. LANGLEY-SMITH,
Clerk to the Committee.

Westgate Chambers,
Gloucester.

CITY OF BIRMINGHAM

Appointment of Full-time Female Probation Officer

APPLICATIONS are invited for the appointment of a Full-time Female Probation Officer for the City of Birmingham.

The appointment and salary will be in accordance with the Probation Rules, 1949 to 1952. Candidates must not be less than twenty-three years nor more than forty years of age, except in the case of a serving officer.

The post is superannuable and the selected candidate will be required to pass a medical examination.

Applications (in own handwriting), giving age, present position, general qualifications and experience, should be sent with copies of three recent testimonials to the undersigned not later than fourteen days after the publication of this notice.

T. M. ELIAS,
Secretary to the Probation Committee.

Victoria Law Courts,
Birmingham, 4.

COUNTY OF FLINT MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk

APPLICATIONS are invited from Solicitors qualified in accordance with the Justices of the Peace Act, 1949, for the whole-time appointment of Clerk to the Justices for the County Petty Sessional Divisions of Mold, Hope, Hawarden, Northop, Holywell and Caerwys, with an approximate population of 80,500.

The personal salary will be £1,450 per annum rising by annual increments of £50 to £1,650 subject to review at the discretion of the Committee when the National Scales for Justices' Clerks have been agreed, and approved by the Home Secretary. The appointment will be superannuable in accordance with the above Act.

The Clerk appointed will be required to take up his duties by May 1, 1953.

Application forms and conditions of service may be obtained from the undersigned and the application, together with three recent testimonials (originals), sent to the undersigned by 10 a.m., March 6, 1953.

Canvassing will disqualify.

W. HUGH JONES,
Clerk of the Magistrates' Courts Committee.

County Buildings,
Mold.
February 7, 1953.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

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NOTES of the WEEK

"In Charge of a Motor Vehicle"

There have been various decisions in the English and the Scottish courts as to the meaning of the words "in charge of a motor vehicle" in s. 15 of the Road Traffic Act, 1930. The most recent, *Haines* v. *Roberts* [1953] 1 All E.R. 344 lays down a general principle which will be of considerable assistance to magistrates in deciding what is sometimes a troublesome question. That principle, as stated in the head-note to the case, is that where a person leaves a motor vehicle in a road or public place away from home, he is in charge of that vehicle until he puts it into the charge of somebody else.

In the course of his judgment, Lord Goddard, C.J., said: "It may be that, if a man goes to a public house and leaves his car outside or in the car park, and, getting drunk, asks a friend to go and look after the car for him or take the car home, he has put it in charge of somebody else, but if he has not put the vehicle in charge of somebody else he is in charge of it until he does so". That leaves it open to a defendant to put forward a defence as to which the justices will have to judge on the facts of a particular case.

There remains another point which may easily arise, upon which the Divisional Court did not have to pronounce, but which was referred to by the Lord Chief Justice when he said: "Some day, I daresay, we shall have to decide the question whether, if the car is in a car park and there is an attendant at the car park, the attendant is in charge. That, no doubt, will be a question of fact."

Maintenance Arrears: Suspended Committal, Appropriation of Payments

It is a common practice for justices, on finding arrears to be due under a maintenance order, to order the defendants committal to prison and then to suspend the execution of the warrant so long as he pays the weekly amount and in addition a specified sum off the arrears. The question how payments to the collecting officer made while the warrant is in suspense should be appropriated has given rise to some difference of opinion and practice, as our Practical Points columns have shown.

It is fortunate that there is now a decision of the Divisional Court on this point. *R.* v. *Glamorganshire Justices, Ex parte Young* (*The Times*, February 7) was an unsuccessful application for an order of *mandamus* directed to justices requiring them to commit to prison a husband who had failed to make sufficient payments to the wife under a suspended committal order, but who had paid arrears of maintenance due to her when that order was made. The committal order in this case was suspended while the husband paid the sums provided for in the maintenance order, and in addition two shillings a week on account of arrears, which amounted to £7 12*s.* 6*d.* The husband made three payments of £2 and paid the balance of £1 12*s.* 6*d.* on his arrest, whereupon he was released.

Pearson, J., who delivered the first judgment, having stated the facts and referred to the relevant statutes, said that in his opinion the conditions of the suspension of the warrant did not deprive the husband of the right to secure a discharge of or a release from the committal order by payment of the original debt. The husband was entitled to appropriate or have appropriated the £7 12*s.* 6*d.* to the discharge of the original debt and he was rightly considered to have paid the original debt. Lord Goddard, C.J., and Croom-Johnson, J., agreed and the application was dismissed. Lord Goddard observed that the justices could have made a fresh order in respect of the arrears which had accrued since the date of the committal order.

Appeals in Matrimonial Cases

In *R.* v. *Glamorgan Justices*, *supra*, the proceedings were not by way of an appeal, but were by application for *mandamus*. The Lord Chief Justice, after expressing his agreement with the judgment of Pearson, J., said there was no doubt the matter could have been raised by way of special case. Lord Goddard added that he thought it desirable if all appeals relating to matters under the Summary Jurisdiction (Married Women) Acts were brought to the Probate, Divorce and Admiralty Division. If the practice were changed by rule or by an order of the Lord Chancellor under s. 57 of the Judicature Act, 1925, it would be a desirable alteration.

As the law stands at present, no appeal by way of special case lies to the Queen's Bench Division against the making or refusal of an order under these Acts, *Manders* v. *Manders* (1897) 61 J.P. 105; *Dodd* v. *Dodd* (1920) 83 J.P. 287, but a case may be stated on a point of law as to the enforcement of arrears, *Ruther* v. *Ruther* (1903) 67 J.P. 359; *Adams* v. *Adams* [1914] P. 155. There is no right of appeal to the Divorce Division upon a question of enforcement of arrears, *Griffiths* v. *Griffiths* (1909) 73 J.P. 391.

Jurisdiction under the Adoption Act

Child Adoption (which is the bulletin of the Standing Conference of Societies Registered for Adoption) reproduces extracts from a book review by the late Judge Hugh Gamon, in which some interesting suggestions on the amendment of the law are put forward.

One which will be of special interest to magistrates concerns the jurisdiction of county courts and juvenile courts.

"Under the present adoption code a concurrent jurisdiction in making adoption orders is exercised in any area both by a county court and a juvenile court . . . Applicants naturally tend to apply to the court in which they are likely most readily to obtain their adoption order, so that the concurrent jurisdiction . . . tends to encourage applications to the more easy-going and less thorough court of the two, which is eminently unsatisfactory.

"It is I think, therefore, highly desirable that the concurrent jurisdiction of county court and juvenile court should be ended. For adoption cases the precincts and atmosphere of a county court are more appropriate than those of a magistrates' court, and I would suggest that the most satisfactory solution would be the creation of a special tribunal to deal with adoption cases consisting of the local County Court Registrar as chairman, with two juvenile court magistrates as colleagues, sitting in the county court premises and subject to a right of appeal to the county court judge. Such a tribunal would I think combine the merits of both county court and juvenile court."

Obviously there is no intention here to disparage the work of the juvenile courts, but only to provide the most suitable kind of tribunal for a careful hearing in this important class of case. Whether the suggested court would really bring together the best features of both county courts and juvenile courts, and whether the atmosphere of a county court is more suitable than that of a juvenile court, are matters of opinion, and we doubt very much whether magistrates would agree that the law needs changing in this respect. This concurrent jurisdiction has existed since the Act of 1926 came into force, and we have never heard any general criticism of the way in which it has been exercised by either of the two courts, and we are by no means persuaded that any change is necessary.

Crime Prevention in the City of London

The way in which close co-operation between police and public can result in a reduction in certain classes of crime is demonstrated by the report of the Acting Commissioner of Police for the City of London upon the work of the Prevention of Crime Squad for the last eight months of 1952.

The principal crimes aimed at, as being most prevalent, were petty thefts from inside offices and shops, and breaking and entering premises. The police sought to interest occupiers of premises and owners of property in measures they could themselves take to guard against loss. Thousands of leaflets were distributed and were followed by thousands of personal calls by police officers. Attention was directed to precautionary measures in regard to property left unattended in offices, shops, warehouses, etc., taking cash to and from the Bank and so on.

An outstanding feature of the campaign is the endeavour to secure the appointment of a sufficiently public spirited member of the staff—in each department if there are several—or a paid security officer, in the various business houses, to act within their own premises and in liaison with the police, in correcting careless habits of leaving property unattended and generally in ensuring the safeguarding of premises and to play their part in preventing crime.

It has been established that some 450 persons, security officers and others, have been appointed in this manner. Improvements in premises have in many cases been made such as locks overhauled and replaced, alarm bells fitted, bars placed across fanlights, grilles fitted to windows, valuable window displays removed at night, as well as such improvements as the staggering of staff lunch times to avoid offices being left entirely unattended.

Some of the results can now be estimated, and they are certainly striking. From May to December, 1952, as compared with the corresponding period in 1951, there appears to have been a reduction of thirty-six *per cent.* in larcenies from premises, and of 11.1 *per cent.* in breaking offences. There was an increase, however, of 6.4 *per cent.* in thefts of and from vehicles in the street. It is suggested that this increase may in part be due to increased purchasing, especially at the Christmas season, and that this resulted in more property being left unattended in motor-cars. In fact, the increase represents sixteen additional crimes.

The report acknowledges gratefully the help that has been forthcoming from the press and the public, which has contributed in no small measure to the success so far achieved.

Previous Convictions Made Known to Appeal Committee

An unsuccessful application for an order of *certiorari* was made to the Divisional Court by a woman named O'Brien, who contended that there was a denial of natural justice when she was sentenced to imprisonment at Dorset Quarter Sessions (*see The Times*, February 3). She had been committed by a magistrate's Court to quarter sessions for sentence, under the provisions of the Criminal Justice Act, 1948, s. 29. She appealed to quarter sessions against her conviction, and both the appeal and the matter of sentence were dealt with by the appeal committee. It was argued that as certain documents relative to sentence which revealed the appellant's previous convictions had been before the justices of the Appeal Committee when hearing the appeal, she was prejudiced by their knowledge of her character. The Appeal Committee dismissed her appeal, and sentenced her to six months' imprisonment.

In delivering judgment refusing the application, the Lord Chief Justice observed that Parliament had decided that cases going forward to quarter sessions for sentence had to be considered by the Appeals Committee which was now the only body which could hear appeals from justices. In the circumstances it was a matter of ordinary machinery that justices sitting on the appeal must know when an appellant had been committed for sentence that it was because of his bad record. Justices could be trusted to deal with such cases fairly, and in this case the court could see no reason for saying that justice was not done in accordance with the Act of Parliament.

It necessarily happens at times that justices constituting a magistrates' court have to be told about a defendant's previous convictions before he has been found guilty by them. When a question of bail arises upon a remand, there may be an objection on the part of the police on the ground of previous convictions, and it seems unavoidable that the justices should be informed of these. It was decided in *R.* v. *Fletcher* (1949) 113 J.P. 365, that it was right for justices to be so informed, and although this was upon committal for trial, the principle might be applicable to a remand. As far as possible, evidence of the bad character of an accused is kept from the knowledge of the court which is trying him, but sometimes this cannot be. The justices must not allow the revelation of the defendant's past to prejudice his chance of an impartial trial, and, as was said by the Lord Chief Justice, justices can be trusted to deal fairly.

Reporting Accidents to the Police

We understand that doubts have been expressed from time to time as to the exact obligations placed upon motorists by s. 22 Road Traffic Act 1930. The point in issue was whether a motorist who complies with s. 22 (1) by giving his name and address to someone at the time the accident occurs is placed by s. 22 (2) under an obligation to report the accident to the police.

The argument on the one side has been that the opening words of s. 22 (2) "if in the case of any such accident as aforesaid

the driver of the motor vehicle for any reason *does not give his name and address to any such person as aforesaid*" dispose of the matter, and that there is no obligation to report to the police if particulars have been given "to any such person as aforesaid."

The argument on the other side has been that the words later in subs. (2) "and *in any case* within twenty-four hours of the occurrence thereof" override the opening words of the subsection, and impose an absolute obligation.

We have always been in favour of the first argument, and have thought the second one unsound. The matter has now been decided, we are informed, by a divisional court in a case of *Green* v. *Dunn*. In that case justices had convicted a motorist under s. 22 (2) notwithstanding that he had given the particulars to an authorized person by virtue of s. 22 (1). The justices, at the request of the motorist, stated a case and we are informed that it was heard in the High Court on January 19. The Court allowed the appeal with costs, holding that the magistrates' interpretation of s. 22 (2) was incorrect and that an obligation to report under that subsection arose only when s. 22 (1) had not been complied with.

We do not know, at the time of writing this note, whether this case will be reported in due course. We are grateful to a learned correspondent who supplied us with the particulars on which this note is based.

Cheshire Finances, 1951/52

Cheshire spent £9,493,000 in the last financial year, reports the County Treasurer, Mr. R. H. A. Chisholm, F.I.M.T.A., F.S.A.A. Fifty-three *per cent.* was met by government grants, nine *per cent.* by miscellaneous income and the balance totalling £3,569,000 by rates. Rates precepted were 14*s.* 6*d.*, rates eventually required 13*s.* 9½*d.*, and thus the sum of £189,000 being the produce of an 8½*d.* rate was added to balances in hand, which at March 31, 1952, totalled £744,000. Compared with the previous year there was a general increase of expenditure of fifteen *per cent.* or £1,230,000; the estimates for the current year show a further increase and although the rate precept remains at 14*s.* 6*d.* the rate required to cover net expenditure has increased by 10½*d.* In common with those of the great majority of local authorities, the Cheshire estimates for 1953/54 will almost certainly reach a new high record. Costs have not ceased to rise, and services continue to expand. We need instance only school building. On the Ministry of Education approved scale a new primary school accommodating, say, 240 pupils costs close on £60,000 to build and equip, and about £12,000 to run each year, a secondary school providing for, say, 510 pupils costs about £150,000 and £35,000 annually to run.

Loan debt reflects the expansion of capital expenditure, and at March 31, 1952, totalled £3,866,000 of which £2,665,000 was on education account. Education debt increased by £911,000 during the year: this sum represented ninety-three *per cent* of the total debt increase of the county council.

A point of great interest to chairmen of finance committees and treasurers is spotlighted by Mr. Chisholm when he discloses that no less than £840,000 out of the total £1,286,000 shown on his balance sheet as owing to the county council is due from Government departments. "It is obvious," he says, "that delay in payment of these balances has an important bearing on the size of the working balance required by the county." Although nationally based representations continue for reduction of this class of debt, we regret that little impression seems to have been made on Whitehall up to the present.

Illuminating unit costs are given. The average weekly cost of maintenance in publicly maintained children's homes is £5 19*s.* 4*d.*: the average weekly cost per boarded-out child is £1 9*s.* 3*d.* These figures emphasize how much cheaper it is to do the right thing for normal children in care, and lend point to the recent recommendation of the Select Committee on Estimates that all responsible authorities should strive to increase the percentage of children boarded out.

With an average of thirty-three primary pupils and twenty secondary grammar pupils per teacher average costs of education were £23 *per annum* per primary pupil and £47 per secondary pupil. Amounts paid by householders in respect of home help averaged twenty-five *per cent.* of the gross cost which is a relatively high rate of recovery.

It is interesting to learn that 12,900 acres of land are held for small holdings, divided between 388 tenants, in respect of each of whom there is a deficiency falling upon the county rate equal to £58 13*s. per annum.*

Children taken into Care—Untrue Information

It has been reported to the Association of Municipal Corporations that there have been some cases in which children have been taken into care by local authorities through untrue information having been given such as that the mother had deserted them. In other cases parents have deliberately and successfully deceived local authorities in order to secure the admission of their children into care although the children did not fulfil the condition laid down in s. 1 (1) of the Children Act, 1948. In some of these cases it was impossible for the local authority to unmask the deception before the children were admitted. It has been suggested, therefore, that the law should be amended to provide for a penalty in such cases, and that although it is probable that there would be comparatively few prosecutions, the possibility of prosecution might help local authorities to prevent such abuse arising.

An Australian's View of British Local Government

Some of us live too near to our work and are so conversant with the practical application of the local government of this country that it is sometimes refreshing to hear of the reactions of observers from overseas. Three Australian town clerks came to study local government in Britain under the auspices of the British Council and one of them (Mr. Roy Stuckey, Town Clerk of Hunter's Hill) on his return, wrote a booklet setting out for Australian readers a summary of the activities of the various types of local authorities in this country and also making a few comparisons with the position in Australia. There, local government is the creation of each State Government and there is very little uniformity throughout the Commonwealth. Its parent, the State, no longer possesses powers of taxation, which have been transferred to the Commonwealth and is, therefore, unable to give much financial help to local government. In some States, local government shows a reluctance to expand and accept responsibilities and the visit of the town clerks to Britain taught them that there is room for a much greater development of local government in Australia, that local government can, generally speaking, do a job better than central government because of its decentralization and proximity to the people, but that expansion of powers and duties must be accompanied by adequate finance from the general taxation pool so that all people contribute towards the all embracing services which local government can give.

Mr. Stuckey's study of the local government structure here compelled his admiration and he hopes will serve to stimulate those in Australia to greater efforts to achieve a greater measure of local government there. The welfare services impressed him

particularly and he says there is nothing comparable in Australia. On housing, he points out that in Australia there has been concentration on ownership by the individual and not for rental. One of the most interesting aspects of the tour of the three town clerks was to study the administration of the various departments of a local authority and Mr. Stuckey commends the principle of having a treasurer, or financial officer whereas in Australia the town clerk (who is often an accountant but very seldom a solicitor) combines in his person both offices. He also speaks favourably of our committee system and suggests that the development of such a system, including a measure of co-option, would strengthen local government in Australia.

THE RECOVERY BEFORE MAGISTRATES' COURTS OF PENALTIES UNDER THE EXCISE ACTS

In *The Times* of February 6, 1953 (and *see* p. 117 *post*), there is reported an important case, *Brown* v. *Allweather Mechanical Grouting Co. Ltd.*, heard in the Divisional Court on February 5, before the Lord Chief Justice and Lynskey and Pearson, JJ.

Oxfordshire Justices had before them the above-named company charged with aiding and abetting the use of a goods vehicle for a purpose for which it had not been licensed and for which purpose a higher rate of duty was payable than had been paid. This was alleged to be contrary to the Summary Jurisdiction Act, 1848, s. 5, and the Vehicles (Excise) Act, 1949, s. 13 (2). The justices accepted the argument put forward by the defence that s. 13 (2) aforesaid does not create an offence punishable on summary conviction within the meaning of the aforesaid s. 5, and that the defendant company could not, therefore, be guilty of aiding and abetting. The High Court, on appeal by the prosecutor by case stated, upheld the justices decision, and we propose to refer at some length to the judgment given by the Lord Chief Justice and then to discuss some of the implications of this decision.

Section 13 (2), *supra*, is as follows: "Where a licence has been taken out in respect of a mechanically propelled vehicle, and by virtue of such user as aforesaid a higher rate of duty becomes chargeable and duty at the higher rate was not paid before the vehicle was so used, the person so using the vehicle shall be liable to whichever is the greater of the following penalties, namely: (*a*) an excise penalty of £20; or (*b*) an excise penalty of an amount equal to three times the difference between the duty actually paid on the licence and the amount of duty at that higher rate."

The Lord Chief Justice said that the point taken by the defence was that the sanction provided by s. 13 (2) of the Act of 1949 *for the offence which it created* (the italics are ours) was a monetary penalty which could be recovered in various forms of proceedings, but it was not an offence punishable as a criminal offence, though the penalty might be recovered in penal proceedings. As a general rule, he continued, if the word "penalty" was used in a section instead of the word "fine" the penalty must be sued for and recovered in a civil court, whereas a fine was imposed by a criminal court and went to the Crown.

His Lordship added that the offence in this case was against s. 13 (2) of the Vehicles (Excise) Act. That being so, the Excise Management Act, 1827, applied to proceedings under it. There were no words in s. 13 (2) which referred to summary conviction or summary trial, or indicated that it was a criminal offence which had been created. He referred to the *Attorney-General* v. *Bradlaugh* (1885) 14 Q.B.D. 667.

This was a case concerned with the trial of an information at the suit of the Attorney-General against a member of the House of Commons for voting without taking the oath of allegiance. It was held by Brett, M.R., and Lindley, L.J., Cotton, L.J., doubting, that an information of this kind to recover penalties under s. 5 of the Parliament Oaths Act, 1866, is not a "criminal cause or matter" within the Supreme Court of Judicature Act, s. 47, and that appeal lay to the Court of Appeal. The offence in this case is one rendering the offender liable to a penalty of £500, to be recovered by action in one of Her Majesty's Superior Courts at Westminster.

The Lord Chief Justice, referring to this case, cited the words of Brett, M.R., that the recovery of the penalty did not make the prohibited act a crime. In his view it was quite clear that an excise penalty was something quite different from a crime. On the point raised by the case the justices had come to a perfectly right decision in point of law, and the appeal must be dismissed.

This is obviously a decision of great importance to magistrates' courts and to local authorities responsible for enforcing the provisions of the Act of 1949. It is unfortunate that the present position is not quite the same as that which was dealt with in the case because, as we have noted, the Lord Chief Justice pointed out that the provisions of the Excise Management Act, 1827, were then relevant. This Act, by s. 65, dealt with the recovery of excise penalties before justices. We see no point in discussing here the effect of that and other sections because the whole Act of 1827 (except s. 8 with which we are in no way concerned) has been repealed by the Customs and Excise Act, 1952. This latter Act came into force on January 1, 1953, and is one to consolidate with amendments certain enactments relating to customs and excise, etc.

We should like to try to come to a conclusion as to the present position in relation to proceedings under s. 13 (2) and other sections of the Vehicles (Excise) Act, 1949, and we start by observing that that Act makes no provision as to how these penalties are to be recovered. It does, on the other hand, refer specifically in certain other sections to persons guilty of offences being liable on summary conviction to a fine not exceeding a stated amount, or to a term of imprisonment as the case may be (*see*, for example, s. 15 (4) and s. 21).

When we look, however, at the Customs and Excise Act, 1952, we find in s. 283 the following provision:

"S. 283 (2). Subject to any express provision made by the enactment in question any offence under the customs or excise Acts

"(*a*) where it is punishable with imprisonment for a term of two years, with or without a pecuniary penalty, shall be punishable either on summary conviction or on conviction on indictment;

"(*b*) in any other case shall be punishable on summary conviction."

We note here the use in subs. 2 (*a*) of the word "penalty."

It seems to us that the question which has to be decided (and it may well be that in view of the case which has led to the writing of this article only the High Court can decide it) is whether s. 283 (2) applies to proceedings in respect of offences in s. 13 (2), and equally under s. 15 (1). We emphasized earlier in this article the reference to an offence against s. 13 (2). That it is an offence seems clear, by necessary inference, from s. 15 (2). We say this

because the provisions of s. 15 (1) are very similar to those of s. 13 (2) and are followed by s. 15 (2) as follows : " Proceedings for a penalty under the last foregoing subsection may be brought at any time within a period of twelve months from the date *on which the offence was committed.*"

If, then, these are offences they must be offences against the Vehicles (Excise) Act, 1949. Referring back to s. 283 (2), *supra*, we see a reference to " any offence under the customs or excise Acts." Turning then to s. 307 we find these defined as meaning " these provisions of this Act, and any other enactment for the time being in force relating to customs or, as the case may be, excise." We submit, therefore, that the Vehicle (Excise) Act, 1949, is one of the " customs or excise Acts " within the meaning of s. 283 (2) and we can see no reason why that subsection does not apply to offences under s. 13 (2) and s. 15 (1) of the Act of 1949.

If this is a correct conclusion it would seem that the case of *Brown* v. *Allweather Mechanical Grouting Co. Ltd., supra,* decided as it was on the law in force before January 1, 1953, may not be binding in considering a case arising after that date when the relevant section regulating the proceedings is s. 283 (2) of the Act of 1952. By this section the offences in question, if we are right, are made offences " punishable on summary conviction," and this is all that is required to make applicable the provisions of s. 5 of the Summary Jurisdiction Act, 1848. We write, of course, with some diffidence, having regard to the case referred to, but we hope that we have put forward arguments which are at least worthy of serious consideration.

WEEKLY NOTES OF CASES

CHANCERY DIVISION

(Before Danckwerts, J.)

BRITISH ELECTRICITY AUTHORITY AND ANOTHER *v.* EXETER CORPORATION

Jan. 28, 29, 1953

Electricity—Nationalization—Local authority as authorized undertakers—Financial adjustments—Sum wrongly transferred to aid of rate—Liability to remit—Exeter Corporation Act, 1935 (25 *and* 26 *Geo.* 5, *c. cii*) *s.* 112—*Electricity Act*, 1947 (10 *and* 11 *Geo.* 6., *c.* 54) *s.* 14 (1).

Under the Exeter Corporation Act, 1935, the defendant local authority carried on various activities and were authorized undertakers for the supply of electricity for their area. On April 1, 1948 (the vesting day) under the Electricity Act, 1947, s. 14 (1), all the property, rights, liabilities and obligations of the local authority, as electrical undertakers, vested in the plaintiffs, the British Electricity Authority and the South-Western Electricity Board. By s. 108 of the Act of 1935 all receipts and expenditure were to be paid into and out of the general rate fund, by s. 109 separate accounts were required to be kept in respect of each undertaking, and s. 112 enabled the local authority to apply from the general rate fund to specified purposes in connexion with its undertaking a sum not exceeding the excess revenue, if any, earned by that undertaking, and any excess over capital expenditure, less a specified sum allowed in aid of rate, was to be carried forward to the revenue account of the undertaking for the following year. A sum of £33,355 was transferred to aid of rate for the period ending March 31, 1947, instead of being retained as part of the carry forward for the period ending March 31, 1948. On a claim by the plaintiffs that they ought to be recouped for this breach of statutory duty by the local authority and that the £33,355 ought to be added to the sum, £37,099, which was, in fact, carried forward to the year ending March 31, 1948,

Held : s. 112 of the Act of 1935 required that the whole of the excess of revenue over expenditure in any given year be carried forward to the following year and be deemed revenue of that following year and that only the specified amount might be carried to the aid of rate, and, therefore, that the £33,355 ought to have been carried over to the year ending March 31, 1948, as revenue of that year in addition to the sum of £37,099 which was in fact carried forward.

Counsel : *H. I. Willis, Q.C.*, and *H. F. J. Teague* for plaintiffs ; *Sir Andrew Clark, Q.C.*, and *D. B. Buckley* for the corporation.

Solicitors : *R. A. Finn* ; *Sharpe, Pritchard & Co.*, for *C. J. Newman*, town clerk, Exeter.

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Lynskey and Pearson, JJ.)

BROWN *v.* ALLWEATHER MECHANICAL GROUTING CO., LTD.

Feb. 5, 1953

Road Traffic—Excise licence—Use for purpose not covered by licence—Excise penalty provided by statute—No offence punishable on summary conviction created—Vehicles (Excise) Act, 1949 (12, 13 *and* 14 *Geo.* 6, *c.* 89), *s.* 13 (2).

CASE STATED by Oxfordshire justices.

At a court of summary jurisdiction an information was preferred by the appellant, Brown, on behalf of Her Majesty's Customs and Excise, charging the respondents, Allweather Mechanical Grouting Co., Ltd., with aiding and abetting the use of a goods vehicle for a purpose for which it had not been licensed, contrary to s. 5 of the Summary Jurisdiction Act, 1848, and s. 13 (2) of the Vehicles (Excise) Act, 1949.

A preliminary point was taken on behalf of the respondents that s. 13 (2) did not create an offence punishable on summary conviction within the meaning of s. 5 of the Act of 1848, and that, therefore, the respondents could not be convicted of aiding and abetting. The justices held that the preliminary point was good and dismissed the information. The appellant appealed.

By s. 13 (2) of the Act of 1949 " Where a licence has been taken out in respect of a mechanically propelled vehicle, and by virtue of [its] user . . . a higher rate of duty becomes chargeable and duty at the higher rate was not paid before the vehicle was so used, the person so using the vehicle shall be liable to whichever is the greater of the following penalties, namely— (*a*) an excise penalty of £20 ; or (*b*) an excise penalty of an amount equal to three times the difference between the duty actually paid on the licence and the amount of duty at that higher rate."

Held, that, where a penalty was imposed for doing a particular act, that penalty was the only sanction ; there were no words in s. 13 (2) which referred to summary conviction or summary trial, or indicated that a criminal offence had been created ; and, therefore, the justices had come to a correct decision and the appeal must be dismissed.

Counsel : *J. P. Ashworth* for the appellant ; *Roland Brown* for the respondent.

Solicitors : *Treasury Solicitor* ; *Cripps, Harries, Hall & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

ISLE OF WIGHT COUNTY COUNCIL *v.* WARWICKSHIRE COUNTY COUNCIL

Feb. 6, 1953

Child—Approved school—Expenses—Liability of local authority—Residence of child not known—Children and Young Persons Act, 1933 (23 *Geo.* 5, *c.* 12), *s.* 90 (2).

CASE STATED by the appeal committee of Isle of Wight Quarter Sessions.

On September 7, 1951, a boy was convicted by a juvenile court at Ryde of stealing a yacht and was committed to an approved school. The committal order named the Warwickshire County Council as the local authority within whose district he was resident. The appeal committee of the Isle of Wight Quarter Sessions, affirming a decision of the justices, to whom the Warwickshire County Council had appealed, held that the name of the Isle of Wight County Council should be substituted in the order—they being the local authority in whose area the offence was committed. The committee found that the boy was resident in neither area, and the Isle of Wight County Council appealed to the Divisional Court.

By s. 90 (2) of the Children and Young Persons Act, 1933 : " A court by which an approved school order is made shall cause a copy thereof to be served on the local authority named in the order, and if that authority desire to contend that the person to whom the order relates was resident in the district of some other local authority . . . they may . . . appeal . . . to a court of summary jurisdiction . . . and if,

upon the hearing of the appeal, the court is satisfied that the person to whom the order relates was resident in the district of that other local authority . . . the court may by order vary the approved school order by substituting therein the name of that other authority."

Held, that, owing to a lacuna in the subsection, no provision had been made that, if it was not possible to find where the offender was resident, the local authority substituted should be the one in whose area the offence had been committed, and that, therefore, neither the justices nor the appeal committee of quarter sessions had power to vary the order in the manner in which they had, and the original order of the juvenile court should stand.

Counsel: *Brodrick* for the appellants; *Marshall, Q.C.*, and *M. G. Polson* for the respondents.

Solicitors: *L. H. Baines*, clerk of Isle of Wight County Council; *Sharpe, Pritchard & Co.*, for *R. M. Willis*, Shire Hall, Warwick.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PEARSON *v.* BOYES

Feb. 4, 1953

Road Traffic—Excise licence—"Goods vehicle"—Utility van towing caravan—Vehicles (Excise) Act, 1949 (12, 13 *and* 14 *Geo.* 6, *c.* 89) *s.* 27 (1).

CASE STATED by Lincolnshire (Parts of Lindsey) justices.

At a court of summary jurisdiction an information was preferred by the appellant, Pearson, a police officer, under s. 13 (2) of Vehicles (Excise) Act, 1949, charging the respondent, Donald Boyes, with unlawfully using on a public road a utility van, which was licensed only as a private vehicle, for a purpose which brought it within a class of vehicles to which a higher rate of duty was chargeable under the Act, such higher rate of duty not having been paid.

The respondent was a towing contractor and the owner of a utility van which was constructed or adapted for the conveyance of goods. On July 1, 1952, the respondent used the vehicle on a public road for the purpose of towing a caravan, but no goods were carried in the vehicle or the caravan at the time. The van was licensed as a private vehicle, duty having been paid at the rate of £10 a year. Had the van been licensed as a goods vehicle, duty would have been chargeable at £20 a year, and an additional duty of £10 a year would have been chargeable in respect of the use of the van for drawing a trailer.

The justices were of the opinion that the van was not a "goods vehicle" within the definition in section 27 of the Act and dismissed the information. The appellant appealed.

By s. 27 of the Act of 1949: "'Goods vehicle' means a mechanically propelled vehicle . . . constructed or adapted for use and used for the conveyance of goods or burden of any description."

Held, that, as the whole scheme of the Act was to deal with haulage as distinct from carriage, and following the principle that a subject was not to be taxed unless the tax was imposed by the use of clear words, the court was not prepared to disagree with the decision of the justices, and the appeal must be dismissed.

Counsel: *J. P. Ashworth* for the appellant. The respondent did not appear.

Solicitor: *Treasury Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Croom-Johnson and Pearson, JJ.)

R. *v.* WIMBLEDON JUSTICES. *Ex parte* DERWENT

Jan. 23, 1953

Housing—House constructed under licence from local authority—Condition limiting rent—Letting at excess rent—Time limit on prosecution—Building Materials and Housing Act, 1945 (9 *and* 10 *Geo.* 6, *c.* 20) *s.* 7 (1)—*Summary Jurisdiction*, 1848 (11 *and* 12 *Vict.*, *c.* 43), *s.* 11.

MOTION for prohibition.

At a court of summary jurisdiction sitting at Wimbledon on September 19, 1952, seven informations were preferred on behalf of Wimbledon Corporation charging the applicant, Sidney Derwent, under the Building Materials and Housing Act, 1945, s. 7 (1), with having let a house in Church Hill, Wimbledon, at a price above the permitted price on April 27, 1950. The information in the first case had been laid on June 12, 1952, and a preliminary objection was taken on behalf of the applicant that the justices had no jurisdiction to hear the charge, since the information was not laid within six calendar months from the time when the matter of the information arose, as required by s. 11 of the Summary Jurisdiction Act, 1848, no time being specially limited for the bringing of the information in question under the Act of 1945. The prosecution applied for the amendment of the summons by the addition of the words: "and that the said house continued to be and is still let at the said rent which is in excess of the rent so limited." The justices ordered the amendment to be made and decided that they had jurisdiction to hear the information as amended. The hearing was adjourned, and the Divisional Court granted the applicant leave to apply for an order of prohibition addressed to the justices prohibiting them from hearing this and the six other informations preferred against him by the corporation (in each case on a date more than six months after April 27, 1950), on the ground that the offence created by s. 7 (1) of the Act of 1945, was complete at the date of the letting complained of, and that, in consequence, the summonses, not having been issued within six months of that date, were out of time.

By s. 7 (1) of the Act of 1945: "Where a house has been constructed under the authority of a licence granted for the purposes of a Defence Regulation . . . and the licence . . . has been granted subject to any condition limiting the price for which the house may be sold or the rent at which it may be let, any person who . . . sells or offers to sell the house for a greater price than the price so limited . . . or . . . lets or offers to let the house at a rent in excess of the rent so limited . . . shall be liable on summary conviction to a fine . . . or to imprisonment . . ."

Held, that the offence created by s. 7 (1) of the Act of 1945 was not a continuing offence and it was impossible to construe the section as meaning that an offence was committed during the whole period of the lease; that, as all the offences had been committed more than six months before the date of the respective informations, the justices had no jurisdiction to hear the informations; and that an order of prohibition must issue in each of the cases.

Counsel: *M. R. Nicholas* for the applicant; *Sachs, Q.C.*, and *Elson Rees* for the respondent justices.

Solicitors: *Kenneth Brown, Baker, Baker; Edwin M. Neave.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 13 (*continued*).

A LICENSEE IS ACQUITTED OF HARBOURING A CONSTABLE

It will be recalled that last week there was a report under this heading of a case decided recently at Cardiff Magistrates' Court in which a licensee was acquitted, the learned stipendiary magistrate upholding a submission that there was no case for the licensee to answer upon the ground (*inter alia*) that the prosecution had produced no evidence to show that the defendant knew of the constable's presence upon the premises.

A curious feature of s. 78 of the Licensing (Consolidation) Act, 1910, which, it will be recalled, creates three separate offences under paras. (*a*), (*b*) and (*c*) of subs. (1), is that whereas para. (*a*) makes it an offence for the holder of a licence *knowingly* to harbour a constable, the second and third paragraphs, which create respectively the offences of supplying intoxicating liquor to a constable on duty and bribing or attempting to bribe a constable, omit the word "knowingly". This fact was duly noted by Mr. Justice Day in the old case of *Sherras* v. *De Rutzen* (1895) 59 J.P. 440. The learned judge stated that the inference which he drew from the omission of the word "knowingly" in describing the offences of supplying intoxicating liquor to a constable, and its insertion in the previous subsection, *i.e.*, harbouring a constable, was that it was intended thereby to transfer the *onus probandi*. "In the one case" said the learned judge, "knowledge is to be inferred unless the defendant proves the contrary; in the other case, knowledge must be proved by the prosecution."

The difficulty of the prosecution in proving cases of harbouring is a very real one in view of the fact that a constable who is suspected of having been harboured is, no doubt, disciplined by the police authority and, therefore, cannot be expected to inculpate himself by giving evidence for the prosecution which would enable the licensee to be convicted.

It would be interesting to know the reasons which induced the legislature to differentiate in this way between the standard of proof required to secure convictions for the offences of harbouring and supplying liquor to a constable on duty. It is difficult to think of convincing reasons but it would, the writer fears, be considered near treason to suggest that the true explanation is that a parliamentary draftsman nodded!

Subsection (2) of s. 78 provides for a maximum penalty of £10 for a first offence and £20 for a second.

No. 14.

A DEFECTIVE TRAWLER

A limited company, carrying on a trawling business, was summoned to appear at Scarborough Magistrates' Court earlier this month, to answer two charges laid under the Merchant Shipping Act, 1894.

The first charge alleged a contravention of s. 430 of the Act as amended by s. 5 (2) of the Merchant Shipping (Safety and Load Line Conventions) Act, 1932, and the particulars of the charge alleged a contravention of rr. 18 (3), (18 (7), (28 (1), 35 (1), 45 (1) and para. 7 of sch. 9 of the Merchant Shipping (Life Saving Appliances) Rules, 1952.

The second charge alleged a contravention of s. 419 of the Act of 1894, and the particulars of the charge alleged a contravention of reg. 15 of the Regulations for preventing Collisions at Sea and Rules as to Signals of Distress made under s. 418 of the Merchant Shipping Act, 1894.

For the prosecution, it was stated that when a Ministry of Transport Nautical Surveyor from Hull visited Scarborough on December 17 to carry out a routine inspection of fishing vessels, he found that a trawler owned by the defendant Company had no foghorn which could be worked mechanically.

The surveyor also found that the ship's lifeboat was so stowed that there would have been the greatest difficulty in getting it into the water. The mizzen boom, by which the lifeboat would normally have been put into the water, could not be worked.

There should have been life-jackets in the lifeboat for every member of the trawler crew of ten. There were some old life-jackets, but they did not conform to requirements of the rules.

There should have been twelve distress rocket signals, but the only pyrotechnics for making distress signals were a box of old out-of-date five-star rockets.

There should have been a line-throwing apparatus capable of throwing a half-inch line a minimum of 250 yards. But the line-throwing apparatus was quite useless.

There should have been a painter fitted to the bouyant raft but there was not.

There should have been in the lifeboat two spare oars, but there were three instead of five ; two hatchets, but there was none ; a lamp and oil enough to keep it burning for twelve hours, but there was not.

There should have been a water-tight box containing two boxes of matches not readily extinguishable by wind, but there was none ; a compass in a binnacle, but this was broken and quite useless.

There should have been a sea anchor—a type of drogue to enable the lifeboat to keep her head to the wind and ride out a storm—but there was none ; oil to pour on rough seas and prevent it breaking into the lifeboat, but there was none.

There should have been a torch, first-aid kit, jack-knife fitted with a tin-opener, and a manual pump for baling out the lifeboat, but there were none of these things.

For the defendant Company, which pleaded guilty, it was stated that the Company was very pleased that the survey had been made and attention drawn to the deficiences because the last thing that the Company desired to do was to send a trawler to sea with any risk to members of the crew.

The Chairman stated that the Company would be fined £50 on the first charge and £75 on the second. He added that in the opinion of the court two very serious offences had been brought to light, the lack of the foghorn being the more serious since it could involve other lives through the danger of a collision.

COMMENT.

Mr. E. Ronald Horsman, clerk to the Scarborough Justices, to whom the writer is greatly indebted for this report, mentions that the master of the trawler was similarly summoned, but the justices dismissed the charges against the master when the prosecution offered no evidence against him in view of the pleas by the Company. Mr. Horsman points out that the Merchant Shipping Acts appear to place the same responsibility upon the owners of vessels as upon the master, there being no question of " causing " or " permitting " as in other statutes. The court was informed that the owners had had to spend £192 to replace the deficient tackles, gear, equipment, etc.

By s. 5 (2) of the Merchant Shipping (Safety and Load Line Conventions) Act, 1932, an amendment was made to s. 430 of the Act of 1894 (which imposes a maximum penalty of £100 for failure by the owner of a vessel to comply with the rules for life-saving appliances), by adding to subs. 1 of the section a paragraph that if any provision of the rules for life-saving applicances applicable to this ship is contravened, or not complied with, then an offence is committed.

The aspect of the case which surprises the writer most is that the crew of the vessel in question had presumably been content to go to sea upon a number of occasions when some, at any rate, of the deficiencies outlined by the prosecution were present, but the probable explanation is that as in so many other walks of life " Familiarity with danger breeds contempt."

R.L.H.

PENALTIES

Gloucester—January, 1953—selling food not of the quality demanded. Fined £5. A man tried unsuccessfully to cut a sausage bought from defendants. Further investigation showed that the sausage included an elastic finger dressing.

Nottingham Juvenile Court—January, 1953—malicious wounding. Fined £2. To pay £2 1*s*. 6*d*. costs. A fourteen year old boy slashed a thirteen year old school boy with a razor blade during a children's cinema matinee, because the boy put his arm round the girl sitting between them. Defendant said he had taken out the blade to trim his nails, his hand slipped and an accidental cut resulted.

Worcester—January, 1953—Causing a dog unnecessary suffering. Fined £4 4*s*. To pay £6 6*s*. costs. Defendant kept a collie bitch in a filthy pigsty at the end of his garden. A veterinary surgeon said the dog appeared to have gone without adequate food for ten or twelve weeks.

Huddersfield—January, 1953—(1) Stealing six cups and six saucers. (2) Stealing a wine glass. (1) six months' imprisonment. (2) three months' imprisonment (consecutive). Defendant, a thirty-three year old police constable, pleaded guilty and asked for three other offences of theft to be taken into consideration.

Swansea—February, 1953—(1) Throwing a custard tart to the annoyance of a passenger. (2) Using obscene language. (1) Fined 40*s*. (2) Fined 40*s*. Defendant, a nineteen year old deck hand earning £24 a month, threw a custard tart at a Transport Inspector and hit him in the face. The Inspector remonstrated with the deck hand, who thereupon used bad language. Defendant told a police officer that it was a pure accident that the custard tart hit the Inspector.

Mathry, Pembrokeshire—February, 1953—Supplying milk not of the substance demanded (two charges). Charges dismissed. Four samples of defendant's milk were analysed—two were found to be genuine, one had fourteen *per cent*. added water and the other thirty-nine *per cent*. Defendant summoned his servant, an eighteen year old Irishman, alleging that the contraventions were due to him. The Irishman who was fined £5 made a statement admitting that he had added the water to the milk because " I wanted to show the boss that I was a good cowman."

TIME OF THE ESSENCE

At or about the first crow of the cock
The initial barrage is unleashed by the clock,
You fumble about with a half-fuddled arm
But you cannot switch off that benighted alarm :
The manoeuvre is one that you only can make
When the damage is done and you're fully awake,
And by then you remember the cause of the call
Is a brief, with a fee that's exceedingly small,
For a County Court holden, as County Courts are,
At a spot inconvenient for chaps at the Bar.
(Though if pressed on the point you're prepared to concede
That in this one must yield to the litigant's need.)

Well it's thus that you're faced at the breaking of day
With a troublesome trek for inadequate pay.
With effort you rise, you unfortunate man,
From the depths of a wholly delightful divan ;
You pull up the blinds and look out at the dawn
And your jaw nearly breaks as you stifle a yawn.
Then you put on the kettle and go while it boils
To attend to your necessary toiletary toils :
You tackle your teeth in a truculent manner
And brandish the brush as if wielding a spanner,
You search for your razor, the thing is mislaid,
You find it and then you must look for a blade :
The best you can get is a rusty reject
Which on first application's of little effect,
You try it again and you cut yourself twice
And you utter a phrase which is not very nice :
You seek antiseptic, there's none in the place,
So you slap bits of paper all over your face :
Ablutions completed, in murderous mood
Your thoughts are directed to foraging food.

Though breakfast's a meal that you heartily hate
There's a voidness within which you've got to placate,
And it adds to annoyance that you must prepare
This unappetising and joyless affair,
This is one of the times in a bachelor's life
When he feels himself badly in need of a wife.
(But let it in warning be soberly said
That there's many a wife likes her breakfast in bed.)
Well, the fodder is ready and then you proceed
With an eye on the clock to consume it at speed.
(The bolting a barrister's innards endure,
No wonder a Judge's digestion is poor.)

You gulp the concoction contained in your cup,
You haven't the time now for doing wash-up :
In forty-five minutes your presence is due
On a train that leaves Euston at 8.22.
You pour yourself into your yesterday's shirt
(A white one alas which exhibits the dirt)
You pull on your pin-stripe, your socks and your shoes,
And search for the stud which you constantly lose.

At last you're attired in your legal array
And you gather the things that you need for the day,
Your wallet and diary, a handkerchief, keys,
You'd feel rather naked if you hadn't these,
Your cash, cigarette-case, your lighter and pen
(Women and handbags have nothing on men.)
You grab your old brief-case and bolt for the door
Then return for umbrella—it's starting to pour :
Your shoes, you're reminded, don't keep out the rain,
You'll be soaked by the time that you get to the train.
But duty is duty, there's work to be done,
With a case to be tried, and (if possible) won.

You rush to the bus-stop and find there's a queue—
Yes, others are up just as early as you.
Then three buses pass without deigning to stop,
And you're turned off the next one for standing on top.
With hate in your heart but with silence superb
You return to your place on the edge of the kerb.
(The next poor conductor you get in a case
Will equally firmly be put in his place.)
Your thoughts interrupted, two buses draw nigh,
They seem to be stopping, but no—they go by,
And as they depart comes a fountain of spray
Which catches you as you dodge out of the way.
(Oh why is it bus-drivers seem to take pride
In splashing the people who can't get inside ?)
Another arrives and sweeps regally past,
And then comes the bus that will take you at last.

But the worst of your journey is still to befall—
The bus that you're on is itself on a crawl :
The conductor informs you with patience sublime
That the bus unlike you is ahead of its time.
You're now in the mood for some desperate move,
But you feel that your Benchers would hardly approve,
So behaving—as barristers should—with restraint
You confine your remarks to a mildish complaint.

It's ten to one now that your train has been missed
And you bet that your case is the first in the list,
So there's little to gain by your puffing and blowing
For even a tortoise arrives where it's going.
The bus won't be hurried, but still you get there
And, would you believe, you've a minute to spare.
By running like fury you'll get on the train—
You do, but your breath is so hard to regain
That you're very reluctantly bound to infer
That you aren't, poor man, quite as young as you were.
You reckon it's fellows like you at the Bar
Who really stand most in the need of a car,
But such is your standing your practice won't run
To even the teeniest-weeniest one.

As the train travels on so your spirits revive
And it's just after ten when at last you arrive,
Then you look for the Court : it means asking the way
And you find it despite being directed astray.
It's miles from the station, that's always the case
(They never put Courts in a sensible place.)
You thought that the list would be naturally light
And then when you see it—it gives you a fright.
For there is your case, it's the bottom but two—
It looks like it's lunch-time or later for you.
You watch the Judge leisurely wade through the list,
You wish that that long-winded chap would desist.
He seems to have most of the work in the town,
Oh, why in the world can't the fellow sit down ?

You talk to your client, you look in the Court,
You come out for a smoke and some moral support,
You go back to the Court, the position's the same
And you try to pretend that it's all in the game.
You go off for a coffee, and then for some more,
And return to find things even worse than before.
That long-winded local is still on his feet :
You hope that he'll suffer a crushing defeat,
But he's cutting some ice, for whatever he quotes
His Honour writes down in his copious notes.
So morning wears on and at twenty to one
Only three of the ten in the list have been done.
You're not yet down-hearted—it's sometimes the case
That lunch has the knack of increasing the pace :
But you look at the Judge and you rather suspect
That lunch has on him quite the other effect.

Still at twenty past two you are back in the Court
But progress is slow, that is still the report,
The fifth case is on and it's bristling with maps
(Now who was it said it was going to collapse ?)
Your opponent approaches and offers you half,
Your client greets this with a humourless laugh,
(Though the chances of starting are not very bright
You're reluctantly forced to concede that he's right)
You pace from the door, to the Court, to the door,
You've smoked half a packet by twenty to four,
Then you enter and timidly venture to say
Will His Honour be likely to reach you today ?
Comes the end of your story, the end of the rhyme—
And His Honour adjourns you—" for want of time."
Yes, life is like that—it is wholly unfair,
For you would have been first if you hadn't been there.

J.P.C.

ADDITIONS TO COMMISSIONS

SUSSEX COUNTY

Bruce Edgar Dutton Briant, Deep Thatch, Newick, nr. Lewes.

WEST HARTLEPOOL BOROUGH

Mrs. Winifred Breward, 37, Wharton Terrace, West Hartlepool.
Thomas Preston Everett, Lancastria, Elwick Road, West Hartlepool.
Mrs. Constance Isobel Nicholson, 172, Park Road, West Hartlepool.
Miss Lorna Mary Noble, 8, Bute Avenue, West Hartlepool.
Stanley Rupert Smith, 4, Raeburn Street, West Hartlepool.
Thomas John Williams, 12, The Cliff, Seaton Carew, Co. Durham.

PERSONALIA

APPOINTMENTS

Mr. D. W. L. Griffiths, LL.B., assistant solicitor to Cardiganshire County Council, has been appointed deputy clerk of the County Council.

Mr. Brian H. Wilson, M.B.E., M.A., LL.B., deputy town clerk of Grimsby, has been appointed deputy town clerk of Ilford borough. Mr. Wilson was articled to the town clerk of Preston and was previously chief assistant solicitor to the county borough of Warrington.

NOTICES

The next court of quarter sessions for the city of Winchester will be held at the Guildhall, Winchester, on Friday, February 27, 1953, at 10.45 *a.m.*

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Wednesday, February 11

CONSOLIDATED FUND BILL, read 3a.

Thursday, February 12

THERAPEUTIC SUBSTANCES (PREVENTION OF MISUSE) BILL, read 2a.

HOUSE OF COMMONS

Thursday, February 12

PREVENTION OF CRIME BILL, read 1a.

Friday, February 13

ROAD TRANSPORT LIGHTING (AMENDMENT) BILL, read 2a.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

PREVENTION OF CRIME BILL

The Prevention of Crime Bill has been introduced in the Commons by the Home Secretary. Its object is to prohibit " the carrying of offensive weapons in public places without lawful authority or excuse."

Clause 1 of the Bill provides for penalties of, on summary conviction, up to three months' imprisonment or a fine not exceeding £50, or both ; and, on conviction on indictment, up to two years' imprisonment or a fine not exceeding £100.

Subsection (2) lays down that a constable may arrest without warrant any person whom he has reason to believe to be committing such an offence, " if the constable is not satisfied as to that person's identity or place of residence, or has reason to believe that it is necessary to arrest him in order to prevent the commission of any other offence."

The third and final subsection of this clause provides the definitions. " Offensive weapon " means " any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him." " Public place " includes " any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise."

The second clause of the Bill provides that it should come into force one month after it is passed by Parliament.

CRIMINAL JUSTICE (AMENDMENT) BILL REJECTED

A private member's Bill, introduced by Wing-Commander E. Bullus (Wembley North), to amend the Criminal Justice Bill, was rejected by 159 to 63 votes.

Moving the Second Reading, Wing-Commander Bullus said there could be no controversy about the universal desire to find all the deterrents possible to arrest the growth of crimes of violence. He believed that because of the alarming increase of crimes of violence against the person, our judges should have power to order sentence of whipping. He believed that such power would act as a deterrent against the would-be offender. The death penalty was retained because it served as a deterrent. The Home Secretary recognised the deterrent value of whipping as a punishment for attacks on prison warders. Why should the elderly and law-abiding be refused that obvious safeguard ?

He maintained that the abolition of corporal punishment had proved a costly failure, not in terms of finance but in terms of human suffering, and that powers to order a whipping should be restored to the judges. An experiment which was having unsatisfactory effects should be ended as soon as possible.

He was informed by criminal lawyers that since 1948, the Crown had often accepted the lesser plea of guilty in cases of robbery with violence because the greater offence now carried no extra penalty. Therefore the post-1948 and pre-1948 figures could not be fairly contrasted. But what could not be contested was the fact of the alarming growth of all crimes of violence against the person. The figures had risen from 2,424 in 1940 to 6,516 in 1951. The figures for those over twenty-one years of age had grown from 1,304 in 1938 to 3,088 in 1951.

It was also significant that prior to 1948 no person would plead guilty to the floggable offence of robbery with violence. Surely that was an indication that the threat of whipping was a real deterrent.

He believed that there was widespread support for corporal punishment throughout the country. The Magistrates' Association, which represented a most important body of opinion over the whole country, had given their answer in no uncertain terms. Their views should be respected.

Mr. Ellis Smith (Stoke-on-Trent S) moved the rejection of the Bill.

He said that crime in this country was thriving, and there could be no doubt that public disquiet was manifest wherever one went. In his view, those guilty of crime should be punished, but the task was to remove the causes of crime and, especially among young people, to remove the temptations which gave rise to crime.

He believed whipping, the stocks, the birch and witch-hunts were relics of barbarism. In the mid-twentieth century they were out of date. The difference between the stocks and the birch was mainly one of degree.

In his view, the reason for the outbreak of violent crime and the increase in juvenile crime was the aftermath of two world wars. Lack of parental control during the war had its effect. In addition, one could not train young men as parachutists and jungle raiders without leaving an effect on a small number of them. We had to ask ourselves what contribution we could make in order to remove the influence of the past few years upon our young people.

We had to take constructive steps to deal with the situation. The just published Prevention of Crime Bill was a step in the right direction. There had to be an enormous increase in the police force ; the police had to be given better pay and conditions and better education to enable them to understand why our fellow citizens acted as they did and the best way to deal with them.

The Secretary of State for the Home Department, Sir David Maxwell Fyfe, said they had decided to leave the Second Reading to a free vote of the House.

He thought it was common ground that the strongest and perhaps only argument in favour of corporal punishment was that it was likely to be much more effective, both in preventing the individual from repeating his offence and in deterring others from committing such offences, than any of the punishments which the courts now had power to impose.

He went on to quote the figures of offences known to the police—irrespective of the plea entered—under s. 23 (1) of the Larceny Act, 1916 (*i.e.*, robbery with violence). In 1946, the figure was 804 ; in 1947, 842 ; in 1948, 987 ; in 1949, 860 ; in 1950, 812 ; in 1951, 633 ; and in 1952, 766. It would be observed that, although the figures for 1952 showed a regrettable increase over the figures for the previous year, the total was not so high was for 1950, was substantially less than the totals for 1948 and 1949, and also substantially less than the average of the rising figures of the three years before the abolition.

As regards convictions, in 1948, there were 448 convictions under s. 23 (1) and 45 convictions under the other subsections of s. 23, for robberies *simplicita*, without violence. In 1951, there were 359 under subs. (1), a reduction of 89, and there were 65 convictions under the other two subsections, an increase of twenty. Making every allowance, that certainly did not support, but militated against the point that Wing-Commander Bullus sought to make that the reason for the reduction was that cases had been shifted out of the " robbery with violence " category into the " robbery " category.

He went on to say that it was not right that the provisions abolishing corporal punishment as a judicial penalty should be considered in isolation from the other provisions of the Criminal Justice Act, 1948. It was not an isolated provision. Problems of crime and criminals were approached on a broad front. The Act laid down a large and flexible

plan for reformation, deterrence and prevention and it introduced new forms of punishment. It was particularly important to note the new provisions it made in respect of young and persistent offenders.

The courts had made use of the new provisions regarding corrective training and preventive detention. There were now more than 1,500 men and women serving sentences of corrective training, and more than 900 men and women serving sentences of preventive detention.

" Less than four and a half years after the Act came into operation it does seem, in our view, premature to reverse the provisions of the Act about corporal punishment until there has been more time to assess the effects of the whole scheme introduced by the Act for dealing with different categories of offenders " he said.

That did not mean that they were in any sense complacent about the grave state of crime. They were ready to take vigorous measures to combat crime, as was shown by the introduction of the Prevention of Crime Bill. Despite the difficulties of the capital investment programme, it was important that he should find a way of improving prison accommodation. He was also trying to secure what he believed was the essential of a penal system : to get the elements of deterrence and of reformation into balance.

REVIEWS

Simon's Income Tax. Second Edition. Editor-in-Chief Viscount Simon. General Editor N. E. Mustoe. London : Butterworth & Co. (Publishers) Ltd. Price £15 15s. (5 volumes). Annual service £2 12s. 6d.

In our review of the first edition of this work we remarked that income tax was so vast a subject that (what was then) the new publication we were reviewing was comparable in its conception to such a work as the *Encyclopedia of Local Government Law and Administration*. It was, of course, not so voluminous, though five volumes may well be considered quite enough for a single topic. The work, like other major modern textbooks, was planned to be kept up to date by " service " supplements, but the consolidation of the law in the Income Tax Act, 1952, has made a new edition necessary within some five years of the first. That consolidation was overdue. A whole mass of older income tax statutes had (it is true) already been consolidated in the Act of 1918, but the immense and almost revolutionary changes in taxation in the generation which followed had produced what Lord Simon in his preface to the first edition of this work justly called a labyrinth. As he then said, the fundamental idea of a tax on income is a simple one but, as the amount in the pound increases and as Parliament is persuaded to carry the tax lower and lower in the social scale, so the demand increases for abatements and special treatment for this and that type of taxpayer. The simple conceptions are accordingly overlaid, year by year, with exceptional provisions, of a bulk altogether disproportionate to that of the main provisions. Every taxpayer can see this for himself by looking at the annual return which he has to make, and every one of the paragraphs therein, for differential treatment of some form of income or for relief in respect of a widower's housekeeper or as the case may be, has involved legislation, carefully thought out to go thus far and no further. It follows that even a consolidation like that of 1952, important and valuable as such consolidation is, can do no more than produce order for the time being in the labyrinth. If the boundary hedges between one case and another now run straight instead of crooked, it is still necessary (using Lord Simon's own simile) for the taxpayer to be provided with a thread to show his way.

The list of counsel and others associated with Lord Simon in the first edition was formidable—the work resembling, here again, an encyclopedia rather than an ordinary textbook. The much regretted death of Sir Roland Burrows, K.C., who headed them as general editor, has led to the assuming by Mr. Mustoe, Q.C., of that responsible position. The title page gives the names of fresh contributors, members of the bar and others, who have collaborated with the legal staff of Messrs. Butterworth in the production of this new edition. Of the new edition, the volumes now before us are the first three (which are bound as ordinary books) and vol. 4 comprising upon loose leaves the text of the relevant Acts and Orders with appendices. Volume 5 will contain tables of cases and statutes and a consolidated index, and is to follow in the spring of 1953 ; meantime the reader will find in each of the present volumes an outline index, sufficient for his immediate purposes. Another valuable feature is that the Acts printed in vol. 4 are annotated section by section, with references to the place in the bound volumes where the sections have been treated in the general narrative. If, therefore, the reader approaches whatever problem is before him by way of the annotated text of the Act of 1952, he will find in vol. 4 first that text and afterwards a reference to a full expository treatment in the appropriate earlier volume ; if he is concerned first to read up what is to be known about some topic in narrative form, he can go first to the bound volume where that topic is treated, and then refer to vol. 4 for the text of the Act, so far as anything turns upon its actual language.

In addition to the legislative complications brought about by parliamentary treatment of the income tax, it is one of those topics which leads, inevitably, to a mass of case law. It is well known that the vast majority of the issues which arise between the taxpayer and the Inland Revenue authorities do not get into court and we are inclined to think, though we do not know of any statistics on this point, that the proportion of those issues coming into court has been a great deal diminished in recent years by an ever-increasing spirit of helpfulness on the part of Inland Revenue officials. Certainly there does not seem to be an added bulk of litigation comparable to the complexities built up by the legislature. For all that, the case law is extremely formidable. Where an individual taxpayer has at stake a large sum of money, it is only to be expected that he will wish to test to law under which the Revenue seeks to take from him (it may be) half of that sum or even more. On the Revenue side, it may be thought necessary to take before the courts comparatively trivial cases, because concession of the taxpayer's point would set a precedent which could be very costly. Year by year, the draftsman of the Finance Acts is asked to stop gaps which have been found, but (year by year also) there are cases where an inspector of taxes, or a taxpayer as the case may be, calls the courts to his aid in order to decide whether there is a gap or not. The references to decided cases in a work of this sort are, therefore, essential to the exposition, and take up a large part of it. Where possible references are given to the series of *Tax Cases* published by H.M. Stationery Office as well as to the *Law Reports* officially so called, and, for cases falling within their period, to the *All England Reports*. Where the decision is given in none of these three series, one of the other series of taxation reports is included (where available) in the references to be found in the bound volumes. No doubt when the fifth volume appears the table of cases therein will, according to the practice followed by Messrs. Butterworth in all their major works, give a complete apparatus of references, so that the country solicitor in particular will have every facility for finding the decision he wants in the reports on his own shelves.

The lay-out of any work on income tax, is to a great extent, determined by the crystalized shape of the Income Tax Act which, with its division into schedules and the sub-division of schedule D into " cases," became inveterate in early days (it will be 150 years of age this year). This crystalized shape has indeed been one of the causes working against consolidation of the law, since it increased the difficulty presented to the draftsman of a consolidating statute, in logical rearrangement of his sections. The work begins, then, with an introductory part explaining the nature of income tax, and the distinction between capital and income, with quite a long and fascinating chapter about the history of income tax. The administrative machinery is dealt with in Part II of vol. I, from the Treasury at the apex of the pyramid down to the collectors, through inspectors and assessors and the specially constituted judicial or quasi-judicial organization.

Under the heading of " procedure," the work sets out what is sometimes most important to the practitioner, because it most directly affects the matter in hand, namely the procedure for assessments and appeals, and the remedies available to a taxpayer, with the penalties which the taxpayer may incur.

Still in the general portion of the work, is a group of chapters dealing with special classes of taxpayer, amongst whom local authorities and charities may be mentioned as of special interest to our own readers. The work then proceeds to deal in order with the schedules, schedules A B and C completing vol. 1. The other two schedules (of which D raises the greater number of questions in the realm of income tax proper, though not, perhaps, such difficulties as surtax and excess profits) divide vol. 2 between them. The chapters dealing with schedule D give a full explanation, first of the scope of the charge and then in proper order of the special position of British residents who are abroad and non-residents who are in this country, followed by detailed treatment of the liabilities to tax in respect of certain types of occupation, and such matters as the keeping of accounts for purposes of tax. A similar general lay-out is applied to each of the cases II to VI under schedule D : there is, that is to say, an initial explanation of the scope of the charge followed by such detailed rules as are requisite. Schedule E is then similarly treated and includes a full explanation of the PAYE system.

Volume 3 returns to the general question of computing total income, and obtaining personal reliefs and double taxation relief; after this it goes on to surtax, profits tax, and excess profits levy. As in the treatment of the schedules in vol. 2, each of these matters is dealt with in an introductory chapter followed by the appropriate treatment of the computation of profits, or reliefs (and so on), as the case may be. The method of treatment adopted involves, we found in regularly using the first edition, an appearance of repetition here and there, between one volume or part and another. This is perhaps the consequence of the encyclopedic method, by which so large a team of authors possessing special knowledge is brought in: the immediate problem of which a solution is desired (which typically is what amount of money must a taxpayer hand over to the revenue) can be looked at from different sides: indeed must be so looked at, if the right answer is to be found. This is, really, no disability to the user of the book, since he obtains the benefit of informed treatment of each aspect of his problem.

Volume 4, the last which at the moment is available, is on the loose leaf principle so that replacements and substitutions can be made if required by the Finance Act, 1953, or otherwise. The volume contains the Income Tax Acts, with the Acts imposing profits tax and excess profits levy, and certain miscellaneous Acts and Orders including those dealing with double taxation. A valuable little group of appendices should be mentioned, setting out the rates of tax year by year for a number of years; the rules for wear and tear of machinery and plant, and other subsidiary matters.

We have spoken above of the large number of hands which have contributed to the production. They are the hands not only of lawyers but of accountants who have a special acquaintance with taxation, and this has meant that the work includes not only legal exposition but a number of practical examples of how taxation works. The cost of the work (it must be admitted) is heavy, but this is part of the penalty which the lawyer in common with other professional men has to pay for being alive and in practice in the middle of the twentieth century. The work certainly ought to find a place in every public or institutional library which seeks to be complete, and the private legal practitioner, unless he can obtain quick and easy access to a library where the work can be consulted, will have to obtain it—if he wishes to be in a position to advise clients without delay upon one of the most important and troublesome classes of problem on which they will consult him. We may add that, naturally, we have looked with special interest for what is said about local authorities as taxpayers. There are, in this new edition, the new provisions in ss. 57 and 58 of the Finance Act, 1952, applying to local authorities and to some statutory undertakers and nationalized industries, in relation to excess profits. But this is only one matter concerning them. Under sch. A, B, and D they are subject to the burden of income tax, like other corporate bodies, though there are special problems, and the "agreed rules" governing some matters. Index entries in vol. I, particularly, show how many aspects of tax liability concern local authorities as taxpayers (they are indeed given a special section of the book in that capacity), but as employers they are also very much concerned with sch. E and PAYE. The larger local authorities at any rate would be well advised, accordingly, to place this work upon the bookshelves of their higher staff.

One last word may be added. Income tax is, of all statutory products, the one which Parliament is never content to leave alone for more than twelve months at a time. For this reason, and because the issues are big enough to involve pretty frequent litigation, a "service" is of vital moment to the owner of an expensive text book, and the service volume for the new *Simon* will cost 2*d*. for each weekday, *i.e.*, £2 12*s*. 6*d* a year.

Company Control. By T. G. Rose. London: Gee & Company (Publishers) Ltd. Price 10s. 6d. net.

We have from time to time noticed several legal books produced by Messrs. Gee in their own field, which is that of company and industrial publishers. The enterprise they have shown in producing specialized works is here extended, to publishing an essay which was originally read to the London Centre of the Institute of Industrial Administration in 1951. The purpose is to indicate how the managing director of a company ought to do his work, with an eye first to the efficiency of the business as seen by the shareholders, and secondly to giving the right guidance to those who work under him and who will come after him. As is said in a foreward contributed by Sir Charles Renold, success turns on the manner in which the managing director—and indeed anybody else—uses the paraphernalia appropriate to his position. From this, Mr. Rose is led into a different field of inquiry, what is the nature and what are the requirements of industrial leadership. This means, for example, that the company's accountant must be brought into the way of presenting figures from the "administrative" point of view, and that on the other hand the managing director has a special responsibility to make himself familiar with the working of various departments of the business. Although the book is very slight, and has been prepared specially for the benefit of industrial and commercial readers, there is much in it which can be usefully considered by the clerk of a large local authority, and indeed by the professional heads of a local authority's technical departments.

Tristram and Coote's Probate Practice. Fifth (Cumulative) Supplement. By H. A. Darling and T. R. Moore. London: Butterworth & Co. (Publishers) Ltd. Price 12s. 6d. net.

Probate is one of the subjects which is always with the solicitor in general practice; if he is prudent he takes care that *Tristram and Coote* is also with him. Since the nineteenth edition of the main work appeared there have already been five supplements—this supersedes its predecessors. It is in the standardized style of the supplements to works in the *Modern Textbooks* series, Part I noting all new material with page references to the main work, and Part II including additional Acts and Statutory Instruments. Generally the supplement brings the law up to date as at the beginning of October last, but the preface should not be overlooked, since it calls attention to the Intestates Estates Act, 1952, and the Non Contentious Probate Rules, 1952, which became law after the date fixed for the closing of the supplement, but have in fact been included as it was going through the press. The noter-up runs to ninety pages, which indicates that there is a good deal of new matter for the practitioner to master.

The additional Acts and Orders, since the appearance of the main work, now run out to nearly eighty pages—though it is fair to say that the greater part of this appeared in previous supplements, and is repeated here so that this supplement may be fully cumulative. The main work and the supplement together cost £4 10*s*. net; editors are officers, respectively, of the Probate Registry and the Estate Duty Office, and the practitioner who has *Tristram and Coote* with this new supplement can be confident that his clients' interests will not suffer through his overlooking any point either in the statutes or the practice.

Halsbury's Statutory Instruments. Volumes 14 and 15. London: Butterworth & Co. (Publishers) Ltd. Price 29s. net per volume. Service £4 4s. a year.

These two new volumes of *Halsbury's Statutory Instruments* bring the collection up to date at November 15, 1952, for volume 14 and December 1, 1952, for volume 15.

Volume 14 contains "Mines, Minerals, and Quarries" and "Moneylending and Investments." Under the former heading the greater part of what is printed is, as might be expected, concerned with safety and working conditions in coal mines. These are of vital importance to a large section of the population, and, therefore, indirectly to the country as a whole. There have been a number of new statutory instruments in the last two years, which those concerned with mining should by now have mastered, but the earlier instruments going back to 1906 contain a good deal which the legal practitioner may need to refer to. It is, we suppose, probable that throughout the industries covered by the statutory instruments in this part of the work the management and the trade union officials concerned will have made themselves acquainted with the obligations and the rights of all parties, but the lawyer may be suddenly called upon to advise one side or the other when a difference has arisen, and cannot be expected, even if he practises in a mining area, to have at his fingers' ends all that is embodied in these technical provisions. He should, therefore, arm himself against the contingency of having to advise upon them, by making sure that there is upon his shelves a complete collection of the Statutory Rules and Orders and the Statutory Instruments. Under the subheading of "Coal Nationalization," also, there have been collected a number of Statutory Rules and Orders going back to 1937, *i.e.*, before the industry was fully nationalized. It may be that a good part of this collection is seldom wanted at the present day, but one never knows—its inclusion is a further reason for the practising lawyer to have the book at hand: he may, for instance, be visited by a client who was formerly a shareholder in collieries and wants to know what happened at some earlier date. There is, too, quite a substantial list of Defence Regulations and subordinate instruments still in force relating to this group of industries; these are listed in a page and half, although it has not been necessary to print all of them *in extenso*.

"Money, Moneylending, and Investments" forms an omnibus title covering several inter-connected matters. It was, we imagine, not feasible to arrange these matters otherwise, but the extent in which the ordinary legal practitioner is concerned with this part of the book will vary a good deal according to the nature of his practice. The instruments dealing with local loans will, for example, concern a quite different group of persons from that which is interested in moneylending or in unit trusts. Possibly the most generally interesting portion of the second half of the book, under the above quoted main heading, is "Exchange Control." This affects many persons in different ways at the present time; the list of instruments alone covers three pages of the book though, here again, some have not been found important enough to print in full. Their effect is of course

duly noted wherever necessary. The text of the Defence (Finance) Regulations, 1939, is still not infrequently required and will be found in its proper place.

The other volume which we are here noticing is confined to the three "welfare" topics of National Assistance, the National Health Service, and National Insurance. There is not much upon "National Assistance" by comparison with the other topics, but this part of the book should not be overlooked, since the Statutory Instruments from 1948 to the end of 1952 are necessary for implementing the provisions of the Act itself. That part of the book which relates to the National Health Service is essential to an understanding of how that service works, since the Act of 1946 is one of those which works very largely through a chain of subordinate legislation. There are, for instance, provisions about dissolved authorities, the fees for persons practising under the health service, and the qualifications of various persons whose qualifications are not controlled directly by statutory enactment. Indeed, the list of instruments in this part of the book covers a really remarkable variety of topics; to peruse that list and nothing else is to obtain a glimpse of the magnitude of the structure—and its complications. Those complications cannot be mastered without referring to the instruments which are here printed. The two major National Insurance Acts of 1946, as since amended to some extent by Parliament, have begotten an even larger family of dependent Statutory Instruments, covering more than half of the present volume. Reference to the Acts dealt with in this volume will show at every turn that they had not purported to be a complete code of law. At every point the provisions which affect the rights of the insured person and the duty to insure have to be sought, not only in the Act but also in subordinate legislation. More, perhaps, than any other group of statutes the welfare statutes to which this volume is devoted would incur the hostile criticism of those old-fashioned persons who claim that Parliament should keep in its own hands the work of legislation. An open minded reader must, we think, come to the conclusion with this book before him, whether he likes it or not, that it would have been impossible, with the operative processes of Parliament today, to build the structure of the statutory social services without copious use of statutory instruments. One result of this, and indeed one of the stock objections to the system, is the quantity of printed matter which must be absorbed in order that the system may be understood. As things are in the twentieth century, a great deal of this printed matter was completely unavoidable, but those concerned are only too likely to lose sight of it unless they take the precaution of providing themselves with a book like this, printing all the instruments they need to examine up to some stated date, and keeping the collection going with a service volume.

With these two volumes of *Halsbury's Statutory Instruments* the list of titles is more than half completed, though we suppose it is too soon to forecast what will be the bulk of printed matter under titles in the second half of the alphabet. There is, too evidently, still a lot to come but the volumes are not expensive, as law books go today, considering the quantity and quality of their contents, and if there be any of our readers who have not yet become subscribers to the series we take the opportunity, at this halfway house in its production, of suggesting that they should take a look at the N volume, when we think they will become convinced of the desirability of subscribing to the work.

PRIVATE STREET WORKS EXPENSES

The Private Street Works Act, 1892, applies to county councils in respect of their rural districts and may be adopted by urban sanitary authorities. It gives power to carry out private street works and to recover the costs from owners of properties benefiting.

Section 6 (1) of the Act provides that where any street or part of a street is not sewered, levelled, paved, metalled, flagged, channelled, made good and lighted to the satisfaction of the urban authority, the authority may from time to time resolve with respect to such street, or part of a street, to do any or all of the works required and the expenses incurred shall be apportioned (subject as in the Act mentioned) on the premises fronting, adjoining or abutting on such street or part of a street.

The appropriate resolution having been passed, s. 6 (2) states that the surveyor of the authority must prepare a specification of the works to be carried out and an estimate of the probable expense, and make a provisional apportionment of the estimated expenses among the premises liable to be charged, showing the amounts charged on the respective owners and stating whether the apportionment is made according to the frontage of the respective premises or not, the measurements of such frontages and other considerations (if any) on which the apportionment is based.

Section 10 of the Act provides that unless the urban authority otherwise resolve, the expenses shall be apportioned according to the frontage of the respective premises, but the urban authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations:

(*a*) The greater or less degree of benefit to be derived by any premises from such works.

(*b*) The amount and value of any work already done by the owners or occupiers of any such premises.

They may also, if they think just, include any premises which do not front, adjoin, or abut on the street through a court, passage or otherwise, and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly.

Where a provisional apportionment is made with regard to other considerations than frontage, the owner of any premises shown in the provisional apportionment can object, *inter alia*, on the grounds that the apportionment is incorrect in respect of the degree of benefit to be derived by any persons concerned.

Section 12 provides that when the works have been completed the Surveyor shall make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment (as the case may be) and such final apportionment shall be conclusive for all purposes.

Notice must be served on the owners of the premises affected, who have the opportunity of objecting within one month on one of the following grounds or on all of them:

(*a*) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen *per cent.*

(*b*) That the final apportionment has not been made in accordance with this section.

(*c*) That there has been an unreasonable departure from the specifications, plans and sections.

Section 15 permits a highway authority to make a contribution out of the general rate fund of the whole, or a portion, of the expenses of any private street works.

The foregoing outlines the statutory provisions, and it is our purpose to examine some of the practical problems which arise.

In the first place the authority must decide whether it is desirable to carry out the work. Because of the increasing number of objections received, many authorities have adopted the practice of asking owners of the properties affected whether they desire the work to be carried out and are willing to bear the estimated apportioned cost; it is only if a favourable reply is received from a majority of those concerned that steps are taken to proceed with the work. Other authorities, because of the difficulty of recovering costs at their present day level, avoid making up private streets where possible, and utilize the powers given by s. 19 of the Public Health (Amendment) Act, 1907, to carry out temporary repairs to private streets, and recover the cost from the owners. In such cases the repairs are limited to removing any danger to pedestrians and vehicles, and the street does not become a highway repairable by the inhabitants at large.

It may be noted that a majority of the owners may, under the provisions of s. 7 of the New Streets Act, 1951, require the local authority to secure the carrying out of the necessary street works and to declare the street a public highway.

If it is decided to proceed the authority must then apply for departmental approval because the work which can be done is restricted by government controls under the capital expenditure programme. In deciding whether or not to give consent the Department considers whether the work is necessary in the interests of public health, because of insanitary conditions, or of avoiding danger to life and limb.

Another problem is whether to apportion the cost of the works on a frontage basis or on a " degree of benefit " basis. Very few authorities apportion solely on " degree of benefit " because in such case objection can be taken to each particular apportionment on the ground that it is incorrect in respect of the degree of benefit derived by the property. The complexities of this basis were added to by the decision in *Parkstone Primrose Laundry, Ltd.* v. *Poole Corporation* (1950) 114 J.P. 354. In that case it was decided that even where the " degree of benefit " principle is applied, the apportionment must take into account the frontage of the respective premises as an overriding consideration. In practice, therefore, many authorities (in the case of county councils, about half) apportion on a frontage basis only : others adopt a combination of frontage and degree of benefit.

Before deciding the amounts to be apportioned the authority must determine whether or not to make a contribution to the cost of the works out of the general rate or county fund. If such a contribution is made it must be towards the expenses of the works as a whole, and not the expenses apportioned against any individual frontager. Any contribution made by a county council must be charged on the county fund and cannot be made the subject of a special county charge against the rural area in which the private street works are being carried out. If it is decided to make a contribution, the most equitable result will probably be obtained by considering each street on its merits, subject to the formulation of basic principles. Some suggested principles follow.

First there is the generally high level of costs at the present time. A number of frontagers of small means will probably find payment at the rate of about £2 10*s.* per ft. frontage a considerable burden, although individual cases may differ greatly. The wage earner has obviously received compensation for the increased cost of living on a much more generous scale than many persons dependant on pensions or other income of fixed amount, because even though certain pensions have been increased, the rise has been relatively small. On the other hand the value of property has also risen considerably. After considering all the circumstances it may be felt unsound to give a general contribution on these grounds.

Secondly there may be abnormally high costs in particular cases arising from the special physical characteristics of the districts, *e.g.*, streets in some areas are constructed on difficult sites which involve additional heavy engineering works, special drainage works and other features which raise the cost of making-up beyond that which could be regarded as normal, and accordingly in these cases the frontagers, through no fault of their own, may be faced with quite exceptionally high costs. The authority might, therefore, consider whether to bear the excess cost of any street works above the normal figure. If this were done, such figure would require adjustment periodically in accordance with further rises, or possibly reductions in the cost of making up a normal street.

Thirdly there are the cases of exceptional individual hardship. Apart from personal financial considerations these usually result from long flank frontages which gain little (if any) more benefit from the making up of the street than other properties having normal frontages. The hardship to the flank frontager may be mitigated by apportioning on the " degree of benefit " basis, but as has been stated this procedure is open to challenge and fraught with considerable practical difficulty. Accordingly, a number of authorities have obtained Local Act powers to make special individual contributions towards the amounts apportioned against premises with flank frontages. A typical section from a recent County Council Local Act reads as follows :

" The power of the Council or in an urban district of the local authority under s. 15 of the Private Street Works Act, 1892, to contribute the whole or a portion of the expenses incurred by them in executing private street works with respect to any street or part of a street shall be extended so as to cover also the contribution of the whole or any portion of the amount which would otherwise be apportioned and charged under that Act in respect of the said expenses against any premises of which only a flank fronts, adjoins or abuts on such street or part of a street and the amount which would otherwise so be apportioned and charged against any such premises shall be reduced by the amount of the contribution made by the Council or the local authority as the case may be under this section in respect of such premises."

When all these matters have been considered and decided there still remains the problem of the varying incomes of the individual frontagers. A contribution under s. 15 of the 1892 Act has to be provided by the ratepayers and may result therefore in poor persons having to contribute for the benefit of others who may be much better off, and it is for this reason that many authorities are reluctant to put any charge upon the rates for private street works expenses. The power specially to aid the flank frontager is a different matter, and one which few would challenge, but an indiscriminate contribution to all does not find favour with the majority of authorities. What is really desired is the alleviation of the lot of the person with small resources who is called upon to meet what is to him, or her, a heavy charge. The only practical way of doing this at present is to allow repayment over a long period, or where because of exceptional hardship this would be ineffective, to make an arrangment for nominal payment during the owner's lifetime, or until there is a change in ownership. Some authorities have adopted this principle and accept repayment for the time being of a sum sufficient only to meet the interest due on the amount outstanding.

A further complication arises in county government because while urban districts can be the authorities and have, in general, adopted the 1892 Act, rural authorities have no highway powers. The effect of this position is that while each urban authority is left to make its own decision whether or not to charge its own ratepayers with any part of the costs of private street works in its own area, it may, by a decision of the county council, be called upon to make a further contribution for the benefit of frontagers in rural areas.

We understand that some thirty-six out of the sixty county councils in England and Wales carry out works under the Private Street Works Act, and of these thirty normally make no contribution to the costs. They may be influenced in their attitude by the considerations to which we have drawn attention. We are aware of one county council which formerly made a contribution out of the county fund towards private street works in rural areas, but ceased to do so after considering complaints from urban authorities that ratepayers in their areas were required to pay the whole of the street works charges apportioned against them, and would also have to pay their share of the county council's contribution towards the cost of making up streets in rural areas.

CLOWNS IN CONCLAVE

That dash of smug pretentiousness which is one of the less savoury ingredients in the English character obtrudes itself into the most unlikely places, and affords some justification for the continental view that hypocrisy is our national vice. An impartial observer of our manners and customs is driven to the conclusion that we take our pleasures sadly, and that this national characteristic results from an inherent guilt-complex which some anthropologist ought to investigate. We do not seem to possess the faculty for that whole-hearted enjoyment of life which the Latin nations exhibit in so marked a degree; on those rare occasions when we follow our bent and "let ourselves go" we are apt, rather shamefacedly, to employ the process which the psychologists call "rationalization"—to seek, *ex post facto*, sound moral reasons for yielding uninhibitedly to our desires. This disagreeable habit leads to another—the banding together of like-minded people in all sorts of clubs, unions, associations, societies and institutions whose principal objects are to satisfy the individual and collective consciences of their members by finding an adequate ethical basis for having a good time together. Hundreds of such organizations, with much pomp and solemnity, hold meetings, congresses and conventions, at which the members take themselves and one another very seriously, adopt rules and constitutions, elect officers and committees, and work themselves into a state of becoming vehemence and enthusiasm over trivialities which are thereby magnified out of all proportion, to the thorough edification of all concerned. Almost everybody likes to hear his own voice, and it is a great sop to a man's egotism to take the chair at a meeting, to sit on a board or a committee, and to discuss and regulate ephemeral affairs with intense heat and concentration.

The political parties are the worst offenders, but then such antics are expected of them, and they do provide a certain amount of fun. When, however, the cult spreads to the ranks of the nudists or (as they prefer to call themselves) the naturists, the folk-dancers, the food-faddists and the dress-reformers, to name only a few, the general public are apt to give way to politely-concealed yawns. Despite their reputation for keeping themselves to themselves, Englishmen are embarrassingly gregarious once they have got a bee in their bonnet; they cannot be content to enjoy its buzzing in the privacy of their homes, but must needs set up a whole hive of the species and train them assiduously to infest the headgear of neighbours. Few are content to follow the advice of that great Frenchman Voltaire, who puts into the mouth of Candide the supremely wise aphorism that the greatest pleasure for any man is the quiet satisfaction of cultivating his own garden.

In the American Republic we find the same tendencies; only the nomenclature is different. War veterans band themselves into Legions; militant women come together as Daughters of the American Revolution; university undergraduates form Fraternities under the titles of Phi-Beta-Kappa and other Greek alphabetical combinations. Some associations, such as the Ku-Klux-Klan, find immense satisfaction in dressing up for their parts; this may perhaps be put down to the boy-scout in all of us, to a natural craving, in a materialistic civilization, for romance at any price. The enthusiasm for outlandish names and costumes is not unknown in this country, with its Oddfellows and Buffaloes, which are still with us; though the political epidemic of coloured shirts, which afflicted the country in the 1930's, was effectively checked by the Public Order Act, 1936. Outside politics, however, an enthusiasm for dressing up seems to obsess a large number of these associations—with the exception of the nudists, and even they may be said, in their own way, to take a profound interest in the question of an obligatory uniform.

Recent meetings in London of the British Sun-bathing Association and of the International Men's Clowns' Club have exhibited, as it were, the obverse and the reverse of the cult. The former body, it seems, have been torn with dissension over the question of name; the schism is between the nudists, who object to the wearing of clothes *tout court*, and the naturists, who "have a certain philosophy in their attitude" and "believe in discarding clothes at appropriate times and in appropriate places." We ourselves, shivering in the iron grip of this abominable winter, plump wholeheartedly for the "philosophic attitude" and, if forced to take sides in the controversy, will subscribe to the rebel cause. At the same time we have an uneasy suspicion that our contribution to the discussion would be apt to concentrate on such heretical subjects as central heating, pullovers and woollen underwear, rather than on the orthodox questions which exercise the minds of the more uncompromising members of the movement. Having studied the report of the proceedings and noted with relief that no practical demonstrations were attempted by the rival schools, we yet feel capable of restraining our enthusiasm for joining at this particular moment.

The Clowns, at first sight, appear to propagate a cause more worthy of support. The discomforts that are agitating their minds are not physical but spiritual. It is true that such mundane questions as grease-paint techniques, traditional "turns" and "gags," and the protection of copyright have been discussed at the recent conference, and we confess to a natural curiosity as to the relative efficacy of padded clothing and facial decoration in keeping out the cold. Unfortunately the report makes no mention of these important matters, but concentrates almost entirely on a sterile discussion of the ethics of the profession. Clowning, we are told, must not be "cheap"; vulgarity must be avoided. Political allusion must be eschewed; clowns "should support causes essential to national welfare." These last two precepts seem to us to constitute a contradiction in terms. The affinity between politics and clowning is so close that the one is unthinkable except in terms of the other, and many worthy members of the two professions will find themselves unemployed if misguided purists have their way and effect so unnatural a separation. But, apart from this objection, we cannot too strongly deprecate this attempt to confine the clown within the strait-jacket of social morality, and to seek an ethical justification for this most spontaneous of all arts.

There has always seemed to us something infinitely pathetic about clowns, from the Vice in the old Morality Plays, with his bladder and lath, from Pierrot and Harlequin, in their motley, through the Elizabethan jesters—Touchstone, in *As You Like It*, Feste in *Twelfth Night*, the Fool in *King Lear*—to Jack Point in *The Yeomen of the Guard*, Canio in *I Pagliacci*, the inimitable Grock, Charlie Chaplin and Harpo Marx. Grotesque in appearance, clumsy in movement, they tumble heavily on the stage, receive the buffets and slaps of the other players and, with a look of bewildered resignation, strive so touchingly to make us laugh. It is almost as painful, to a sensitive mind, as watching a trained animal perform its unnatural antics. In their humour which has an element of the tragic, in our laughter which is near to tears, lies the paradox of human life; these things are spontaneous and real, and tasteless attempts at moral justification cannot make them more palatable to anybody but the mealy-mouthed.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Blood tests requested by defendant.*

We are acting for a client who has been served with a bastardy summons. Our client denies paternity and wishes that the matter should be settled by a blood test. We have pointed out to him that a blood test *may* not be conclusive either way, although it might clear him.

We cannot, however, find any reference in any text book in our possession to blood tests in relation to bastardy summons and we should be glad of your advice on the matter. We presume that we should write to the solicitors for the complainant stating that our client wishes for a blood test to take place, but frankly, we do not know where to go from there. We imagine that the costs of the blood test of the three parties concerned will have to be borne by our client but we imagine that we cannot insist on the complainant or the child being tested, although presumably, if the complainant refuses to submit to the test, the fact that she has done so may be brought to the notice of the court and the inference drawn that since the results of the test cannot prejudice her if she is in the right, the fact that she will not submit to a test suggests that her claim is suspect.

We should be very glad of your advice on the matter together with any references which you can give us. SRS.

Answer.

We agree that the defendant should pay for any blood test made at his request, and that there is no power to compel the complainant to submit herself or her child to such a test. She may be asked why she refuses, and comment on her refusal is no doubt permissible, but the court is not bound to draw an adverse inference from her refusal. She may have some objection to the taking of such tests, and it does not necessarily mean that she fears that the test might prove that her evidence was false.

2.—Husband and Wife—*Variation of maintenance order—Can order be increased on application to have order reduced.*

When an application was made for maintenance for a wife and child under the Summary Jurisdiction (Married Women) Acts, the magistrates refused to make an order in respect of the wife, but an order was made for the maintenance of the infant by the father. He now learns that the mother's means have improved. He is accordingly considering the possibility of applying to the petty sessional court under s. 7 of Summary Jurisdiction (Married Women) Act, 1895, for the order to be reduced.

The point on which we should like guidance is whether the court, on hearing the application by the father, would have power to increase the amount ordered to be paid, or whether it has power in such circumstances only to make an order reducing the amount, or refuse to make any order at all. SURI.

Answer.

In our opinion the wording of s. 7, *supra*, and equally of s. 30 (3) of the Criminal Justice (Administration) Act, 1914, is wide enough to enable the court to reconsider the amount of the order and to increase or reduce it, or to leave it as it was, irrespective of the object of the applicant in the case. The applicant takes the risk by bringing the matter before the court, when both parties can be heard. It would of course be open to the wife in this case to apply for a cross summons with a view to having her order increased.

3.—Licensing—*Provisional grant of new licence—Building licence only obtainable for much smaller house.*

At the general annual licensing meeting for one of my divisions two years ago, the justices made a provisional grant of a new licence. The grant was confirmed by the confirming authority in the following May. The brewers, who own the land, have not yet been able to obtain a licence to build a new house, but they have informed me that a licence might be issued within the near future to build a house at a price which will only permit of a building being erected which would be approximately two thirds the size of the building for which plans were originally submitted. As it appears that the justices could hardly make the grant final in view of the rather considerable deviation from the original plans, the brewers now wish to know if they must abandon the grant and apply for a new provisional licence on submission of new plans at the next annual licensing meeting, or whether there is any way of short circuiting this procedure, thus saving considerable time. NIO.

Answer.

It seems that the house that it will be possible to build will be substantially different from that which was contemplated when the licensing justices provisionally granted the licence. Therefore, we think that the cases of *R.* v. *London County JJ.* (1889) 54 J.P. 213 and *R.* v. *Pownall* (1890) 54 J.P. 438, afford no protection to the licence holder when he seeks his final order. There is no reason why another provisional grant should not be applied for at the next general annual licensing meeting, based on fresh plans: if the new application is granted and confirmed it would operate in such a way that the original scheme would be abandoned. There is no way of "short circuiting" this procedure: the desire to "save considerable time" must give place to considerations of whether the new scheme is acceptable to the licensing justices and the confirming authority.

4.—Magistrates—*Jurisdiction and powers—Venue—Costs on appeal to quarter sessions—Which summary court can enforce.*

I should be greatly obliged for some information upon the following matter.

A, having been convicted of an offence before a court of summary jurisdiction, appealed to the appeals committee of the quarter sessions against conviction. B, the superintendent of police stationed at P, was the respondent to the appeal. On the hearing of the appeal it was dismissed and the appellant, A, ordered to pay the costs incurred to the respondent, B. The costs were subsequently taxed, and an unsuccessful application made to A for payment of the amount of the taxed costs. It is now intended to enforce payment of these costs. Under the provisions of s. 5 (2) of the Summary Jurisdiction (Appeals) Act, 1933, the party to whom the costs are ordered to be paid may recover the same summarily as a civil debt.

The question arises as to the appropriate court of summary jurisdiction before which complaints should be made, for the purpose of obtaining an order for payment of the outstanding amount of costs. There are several places involved in the matter, as follows:

1. The district of P—where the respondent to the appeal was stationed at the time of the appeal and for some time after, and where it can probably be contended payment should have been made.
2. The district of X—where the debtor was originally convicted of the offence against which he appealed.
3. The county of G—where the offence was committed, the conviction was made and where the court of quarter sessions, by which the appeal was heard and dismissed, was sitting.
4. The district of Y—where the debtor is now resident.

In spite of a careful examination of the provisions of the Summary Jurisdiction Acts, there would appear to be no clear provisions as to the appropriate court of summary jurisdiction for recovery of a civil debt.

Whilst I am of the opinion that, in the matter referred to above, it could be argued quite clearly that a court of summary jurisdiction in the district of Y, where the debtor resides, would probably have jurisdiction, this is some hundreds of miles away from the places mentioned in 1, 2, and 3 above. Therefore, if proceedings were taken in this court it would entail considerable inconvenience and expense. Any authorities for determining the appropriate court for recovery of a civil debt would be much appreciated. J.S.J.A.

Answer.

This is a matter of a civil debt due from A, living at Y, to B and should have been paid to B at P. In our view the court at P has jurisdiction, and is the only possible alternative to Y.

5.—Magistrates—*Practice and procedure—Committal for trial—Statement of charge in caption to depositions—Stage at which charges are finally determined—Effect of statement and evidence of accused.*

(*a*) Referring to your P.P. No. 6 at 116 J.P.N. 610, am I correct in saying the magistrates make their final decision as to which are to be the charges upon which the accused shall be committed after they have heard the statement and evidence (if any) of the accused and his witnesses?

(*b*) If so, can they also at that final stage commit the accused for any offence which the depositions disclose even though such charge has not been read out either at the opening or before the caution is given to the accused?

(*c*) If the answers to (*a*) and/or (*b*) are "yes" it would seem the charges upon which the accused is committed may differ from the charges read at the outset of the case and also the charges read prior to the caution. Do you suggest that the charges upon which the accused is actually committed should nevertheless be inserted in the depositions book at the beginning and before the caution? JOY.

Answer.

(*a*) After hearing the statement and any evidence tendered by the accused the magistrates make their decision whether to commit him for trial on all or any of the charges read to him in pursuance of s. 12 (2) Criminal Justice Act, 1925.

(*b*) No—*see* s. 12 (2), *supra*.

(*c*) Very occasionally the statement and/or evidence tendered by the accused may justify the magistrates in not committing him for trial on one or more of the charges read to him as above. We say " very occasionally " because the magistrates before putting those charges to him, have decided that there is a *prima facie* case to answer on them, and they must never usurp the functions of the judge and jury whose duty it is to *try* the case. We think that the caption, and the statement of the charges before the caution, should recite those charges which were read to the accused as above before he was cautioned, and that if the magistrates decide subsequently not to commit on any of those charges this fact should be noted on the depositions against the statement of the charges so that it is quite clear exactly what has happened.

6.—Magistrates—*Practice and procedure—adjournment " sine die "—Method of getting the case, and the defendant, before the court to resume the hearing.*

I am concerned with a case in which summonses were issued against a man for (1) dangerous driving (2) driving without due care and attention and (3) driving without due consideration for other persons on the road. At the petty sessional court the first charge only was heard and the defendant was convicted. The other two charges were adjourned *sine die*. The defendant appealed and his conviction was reversed on appeal.

I think that the police may now desire to proceed with the other two charges and, if this is the case, what is the correct procedure and is there any special form of summons to be issued? The original summonses are still in force, but the hearing has been adjourned and accordingly it appears to me that the method to be followed would be for the matter to be mentioned to the magistrates in open court, presumably in the absence of the defendant, and for them to fix a day for the hearing of the adjourned summonses. If this is correct, I can find no precedent of a summons directing the defendant to attend at the adjourned hearing, but I shall be glad of your views. JOU.

Answer.

This difficulty arises because it is generally considered that the Summary Jurisdiction Acts make no provision for an adjournment " *sine die*." An adjournment, by s. 16 of the 1848 Act, is to be to " a certain time and place to be then and there appointed " etc.

In practice adjournments " *sine die* " are quite common, and are followed by written notice of the resumed hearing which notice is either served personally on the defendant or sent to him by post, registered for preference. Experience shows this to be a satisfactory, if unorthodox, way of dealing with the matter.

We may add that the Magistrates Courts Act, 1952, which authorizes adjournments " *sine die*," deals with the matter on these lines but without specifying how the notice is to be given.

7.—Magistrates—*Practice and procedure—Wrong regulation number stated on summons—Summons otherwise in order—Curing this defect.*

A motor cyclist is reported and summoned for an offence contrary to reg. 85 of the Motor Vehicles (Construction and Use) Regulations.

Unfortunately when the summons is drafted the number of the regulation quoted is 81, but in every other respect conformed to s. 32 of the Criminal Justice Act, 1925, also the appropriate section of the Road Traffic Act, 1930, under which the regulations are made was quoted.

In your learned opinion was the summons bad, due only to the fact that the incorrect regulation number was quoted? JOP.

Answer.

We think this is a " defect in form," and that the summons is not bad (*see* Summary Jurisdiction Act, 1848, s. 1). The prosecution should apply to have the summons amended, and the defendant can be offered an adjournment if he alleges that he has been misled or in any way prejudiced by the mistake.

8.—Real Property—*Rights of way—Liability for maintenance of wall.*

A church was built some fifty years ago on a hillside above a small town. A way was left at the side of the church about fifteen feet wide and running beyond the end of the building. At a later date a church house was built at the end of the building and abutting on the way. Later a private house was built abutting on the way which extends still further. The way terminates in a wide portion where carts could turn. Further vehicular progress is barred by an outcrop of rock but a footway continues to another road and in part was cut through rock. The way is supported by a retaining wall some sixty feet high. The urban district council maintains the road to the main entrance of the church. The way appears to have been properly made for a short length to a side entrance. The rest of the way is hardened off but not properly made up. The local authority denies responsibility for the way. The footway is a well beaten track. Below the church and the first part of the way is a church room. It appears that the way has never been taken over as repairable by the inhabitants at large although it has been in existence for over fifty years. Both the footway and the way have obviously been used by worshippers from one part of the town without let or hindrance, and possibly as a short cut.

The question is one of liability for the maintenance of the retaining wall which in places is crumbling and endangering in part the church room and in part private property, *e.g.*, gardens and houses built very close to and below the wall. At the present moment little appears to be known of the transactions that must have taken place amongst the various owners and this is being investigated. Can you indicate whether, in your opinion, the local authority may have any liability through the establishment of a public right of way or highway along the way and footway with any consequent liability for maintaining the supporting wall? PHAN.

Answer.

The information given suggests that, at least for much of the length of the way, the council have not taken over the liability to repair. If they had done so (and if the wall were part of the highway) the failure to repair might be held to be a mere non-feasance: *see* a contributed article at 113 J.P.N. 647.

9.—Road Traffic Act, 1930, s. 49—" *Halt* " *signs damaged—Whether still obligatory.*

1. Two " Halt " signs are erected, which are duly authorized by the competent authorities and comply with the Traffic Signs (General) Directions, 1950, and the Traffic Signs (Size, Colour, and Type) Regulations, 1950. Subsequently they suffer damage; in one case half the triangle and circle surmounting the sign are knocked off and in the other case part of the plate, on which the letters appear, comes adrift so that the letter T is missing from the word " Halt." A motorist drives past both these signs without halting at the major roads and he later admits to the police that he saw them both. He is summoned for an offence under the Road Traffic Act, 1930, s. 49, in respect of each " Halt " sign and he raises the defence that in view of the condition of the signs he should be acquitted. Please advise as to the soundness of this defence.

2. Would your answer be different if the magistrates accepted his evidence when he said that he had not seen the signs? (*Reese* v. *Taylor*, unreported, but quoted in *Stone*, 83rd edn., p. 2095). JUL.

Answer.

1. There are two schools of thought about this, and until a case reaches the Divisional Court it will be impossible to advise with confidence. One school points out that this is a penal enactment, presumably to be construed strictly. Parliament cannot have intended that if a sign has become unrecognizable, the offence should still exist, merely because the sign was of the prescribed colour, size, and type, when placed in position, perhaps some time ago. Section 36 of the Act of 1934, determining the burden of proof, is claimed as supporting the view that, if the sign is in fact no longer of the prescribed colour, size, and type, there is no offence. This school of thought also prays in aid the special provision made by the Pedestrian Crossings (General) Regulations, 1951 (*see, e.g.*, sch. 1, Part I, para. 3) for legalizing crossings which may have ceased to comply strictly with the laws of their being.

The other school of thought would concede that where weather has destroyed the colour, or an injury has completely altered the type, there is no offence, but points out that this is a provision for safeguarding human life, and argues that a defendant is not to be acquitted where the sign is still substantially recognizable.

The question may be one of degree. The court may fairly ask whether the defendant could suppose the sign to be derelict and awaiting removal, or must as a reasonable man suppose it to be still functioning. (The council's officials and workmen cannot be everywhere at once. They might reasonably defer replacing a sign which was but slightly injured, but would surely hasten to replace one seriously injured. Therefore, says this school, a seriously injured sign which has not been removed may reasonably be assumed by the motorist to be no longer meant for him.) To us it seems that the latter view would prevail. If one letter, as stated in the query, disappears, nobody can mistake the effect, and, indeed, the prescribed sign was " placed " —the section speaks here of a past action: it does not say " is placed " or " is displayed." Where to draw the line, it is impossible to say: that the sign shall be reasonably recognizable is the best we can suggest.

2. Does not arise upon the strict view. On the view we prefer, we do not think this is a good defence, so long as the sign is in fact recognizable. If it is, the motorist's duty is to recognize it. Moreover, if in passing a non-effective sign, a driver is guilty of lack of due care or of any other positive offence he can be prosecuted for that, and he escapes all liability only if he does nothing other than fail to conform to the indication given by that non-effective sign.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

COUNTY BOROUGH OF WALSALL

Appointment of Deputy Clerk to the Justices

APPLICATIONS are invited from Solicitors or other qualified persons for the appointment of Deputy Clerk to the Justices for the above County Borough. Applicants should have had extensive experience of all Justices' Clerk's duties including the taking of depositions, and will be required to take courts frequently.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and subject to medical examination.

The salary payable will be within the scale of £800 × £50 to £1,050 per annum, the commencing salary to be determined according to qualifications and experience.

Applications, stating age, qualifications and experience, together with copies of not more than three recent testimonials, should be sent to the undersigned not later than Tuesday, March 10, 1953, and marked "Deputy Clerk" on the envelope.

B. PRICE FRANCIS,
Clerk to the Justices.

The Guildhall,
Walsall.

BOROUGH OF LOWESTOFT

Appointment of Assistant Solicitor

APPLICATIONS are invited from solicitors for the appointment of Assistant Solicitor in the Town Clerk's Department at a salary in accordance with Grade Va or VII of the A.P.T. Division of the National Joint Council's Scales of Salaries, according to experience.

Applicants must have a sound knowledge of conveyancing and should have some experience of advocacy. Previous experience in the Local Government Service will be an advantage.

The appointment will be subject to the National Joint Council's Scheme of Conditions of Service and the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. The appointment will be subject to one month's notice on either side.

Applications, endorsed "Assistant Solicitor," stating age, qualifications and experience, together with three recent testimonials, should be delivered to the undersigned not later than March 6, 1953.

Canvassing, either directly or indirectly, will be a disqualification, and applicants should disclose any relationship within their knowledge to a member or senior officer of the Council.

F. B. NUNNEY,
Town Clerk.

Town Hall,
Lowestoft.
February 20, 1953.

BOROUGH OF BATLEY

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above post at a salary within Grades V(a) to VII of the A.P.T. Division of the National Scales according to experience and ability.

Further particulars and forms of application may be obtained from me.

L. O. BOTTOMLEY,
Town Clerk.

Town Hall,
Batley.

LANCASHIRE MAGISTRATES' COURTS COMMITTEE

Kirkham Petty Sessional Division

APPLICATIONS are invited for the appointment of a whole-time Assistant at the Justices' Clerk's Fleetwood Office. Applicants must be thoroughly competent to undertake all duties at the branch office and to take occasional Courts. Salary scale £555 × £15—£600. The appointment will be superannuable and subject to medical examination.

Applications, giving full details of experience, to be sent to the undersigned not later than March 7, 1953.

T. L. CHILD,
Clerk to the Justices.

12, Station Road,
Kirkham.

WEST NORFOLK PROBATION AREA

Appointment of Whole-time Woman Probation Officer

THE West Norfolk Probation Area Committee invites applications for the appointment of a Woman Probation Officer, to be stationed at King's Lynn, whose services will be assigned to the Borough of King's Lynn and to several County Petty Sessional Divisions. The person appointed will not be required to provide a motor-car in connexion with her duties, but possession of a car will be an advantage. Mileage allowances, in accordance with the Scheme of the National Joint Council for Local Authorities' A.P.T. and Clerical Services, will be payable if a car is provided by the selected candidate.

The appointment and salary will be in accordance with the Probation Rules and the selected candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names and addresses of two persons to whom reference can be made, should be received by the undersigned not later than March 14, 1953.

H. OSWALD BROWN,
Secretary to the West Norfolk Probation Area Committee.

County Offices,
Thorpe Road,
Norwich.

HAMPSHIRE COMBINED PROBATION AREA

Appointment of Full-time Male Probation Officers

APPLICATIONS are invited from persons who have had experience and/or training as Probation Officers for the appointment of two Full-time Male Probation Officers for the above area. One officer will act in the Bournemouth area and the other in the Aldershot area. Candidates must be not less than twenty-three nor more than forty years of age (except in the case of serving officers).

The appointments and salaries will be in accordance with the Probation Rules and the salaries will be subject to superannuation deductions.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the undersigned not later than March 9, 1953. Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Clerk to the Probation Committee.

The Castle,
Winchester.
February 16, 1953.

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